# 2020

# CUMULATIVE SUPPLEMENT

TO

# MISSISSIPPI CODE

## 1972 ANNOTATED

**Issued December 2020**

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2020 REGULAR SESSION

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

# Volume 11B

Titles 45 to 47

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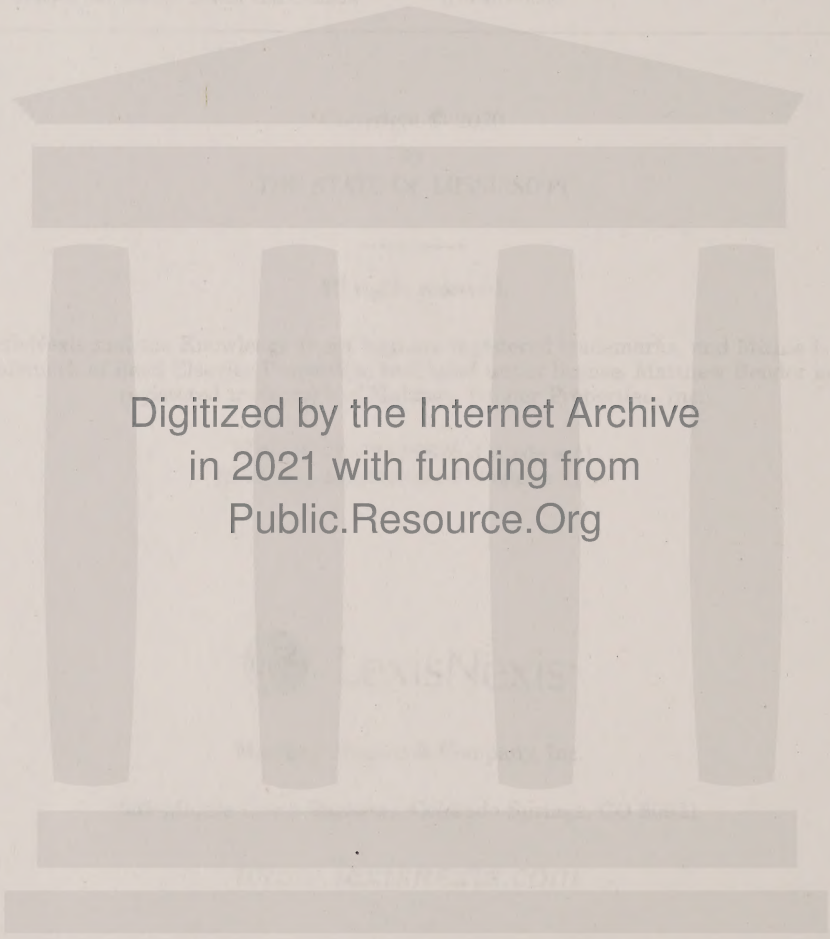
# User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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# PUBLISHER'S FOREWORD

**Statutes**

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

**Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

**Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

**Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

**Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

**Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

**Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

**Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

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# TITLE 45.
# PUBLIC SAFETY AND GOOD ORDER


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# CHAPTER 1.
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## GENERAL PROVISIONS

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45-1-29. Mississippi Forensics Laboratory; funding; fees for services.

45-1-49. Mississippi Highway Patrol Troop K command center in Biloxi, Mississippi, renamed "Commissioner George Landon Phillips District Office.".

## § 45-1-2. Executive Director of Department of Public Safety to be commissioner; organization of department; Commissioner of Public Safety; statewide safety training officer; Mississippi Analysis and Information Center (MSAIC Fusion Center) established within Office of Homeland Security.

(1) The Executive Director of the Department of Public Safety shall be the Commissioner of Public Safety.

(2) The Commissioner of Public Safety shall establish the organizational structure of the Department of Public Safety, which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law including, but not limited to:

(a) Office of Public Safety Planning;

(b) Office of Mississippi Highway Safety Patrol;

(c) Office of Forensics Laboratories, which includes the Office of the Medical Examiner;

(d) Office of Law Enforcement Officers' Training Academy;

(e) Office of Support Services;

(f) Office of Narcotics, which shall be known as the Bureau of Narcotics; and

(g) Office of Homeland Security.

(3) The department shall be headed by a commissioner, who shall be appointed by and serve at the pleasure of the Governor. The appointment of the commissioner shall be made with the advice and consent of the Senate. The commissioner may assign to the appropriate offices such powers and duties as deemed appropriate to carry out the department's lawful functions.

(4) The commissioner of the department shall appoint heads of offices, who shall serve at the pleasure of the commissioner. The commissioner shall have the authority to organize the offices established by subsection (2) of this section as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(5) The commissioner of the department shall appoint, from within the Department of Public Safety, a statewide safety training officer who shall serve at the pleasure of the commissioner and whose duty it shall be to perform public training for both law enforcement and private persons throughout the state concerning proper emergency response to the mentally ill, terroristic threats or acts, domestic conflict, other conflict resolution, and such other matters as the commissioner may direct.

(6) The commissioner of the department shall establish within the Office of Homeland Security a Mississippi Analysis and Information Center (MSAIC Fusion Center) which shall be the highest priority for the allocation of available federal resources for statewide information sharing, including the deployment of personnel and connectivity with federal data systems. Subject to appropriation therefor, the Mississippi Fusion Center shall employ three (3)

regional analysts dedicated to analyzing and resolving potential threats identified by the agency's statewide social media intelligence platform and the dissemination of school safety information.

**HISTORY: Laws, 1989, ch. 544, § 58; Laws, 1990, ch. 522, § 26; Laws, 2000, ch. 492, § 1; Laws, 2001, ch. 524, § 1; Laws, 2004, ch. 595, § 20; Laws, 2015, ch. 452, § 5, eff from and after July 1, 2015, Laws, 2019, ch. 312, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 427, § 9, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of Chapter 312, Laws of 2019, effective July 1, 2019 (approved March 15, 2019), amended this section. Section 9 of Chapter 427, Laws of 2019, effective July 1, 2019 (approved March 29, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

**Editor's Notes —** Laws of 2016, ch. 457, § 2, as amended by Laws of 2017, ch. 428, § 4, effective from and after April 18, 2017, provides:

"SECTION 2. (1) There is hereby created the Mandatory Statewide Offense-Reporting System Task Force to undertake a comprehensive review of all state and local law enforcement agencies' use of offense reports. The task force shall be composed of nine (9) members, as follows:

"(a) The President of the Mississippi Association of Chiefs of Police, or a designee;

"(b) The President of the Mississippi Sheriffs' Association, or a designee;

"(c) The Director of the Mississippi Department of Public Safety's Criminal Information Center, or a designee;

"(d) The Director of the Mississippi Department of Information Technology Services, or a designee;

"(e) The Commissioner of Corrections, or a designee;

"(f) The Director of the Administrative Office of Courts, or a designee;

"(g) The President of the Mississippi Prosecutors Association, or a designee;

"(h) The Director of the Joint Committee on Performance Evaluation and Expenditure Review, or a designee as a nonvoting member; and

"(i) A member to be appointed by the Governor to serve at the will and pleasure of the Governor as the chairperson of the task force.

"(2) A vacancy in the task force shall not affect its powers, but shall be filled as prescribed in subsection (1). A majority of the membership of the task force shall constitute a quorum, and shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the task force. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(3) The purpose of the task force is to work toward producing uniform offense reports and to investigate whether it is possible to require a standardized offense reporting system to get a clearer picture of crime in Mississippi and allow for single-source reporting to the Department of Justice through uniform crime reporting. The task force shall investigate whether an increase in grant funding would result. A goal of the task force is to work to provide a true picture of crime in the state and movement of offenders which could help predict and prevent criminal activity. The task force shall coordinate its work with the arrest and dispositions reporting as a valuable tool for measuring the impact of programs that seek to reduce recidivism, incarceration, and provide more support services in communities. A major focus of the task force will be to recommend an automated reporting system as opposed to manual reports that are compiled every six (6) months.

"(4) The Joint Committee on Performance Evaluation and Expenditure Review shall

provide appropriate staff support to assist the task force in carrying out its duties. The Director of the Joint Committee on Performance Evaluation and Expenditure Review shall designate an appropriate employee to act as a point of contact for staff support to the task force. In addition, the task force may consult with employees of any state agency or department necessary to accomplish the task force's responsibilities under this section.

"(5) The members of the task force shall serve without compensation.

"(6) The task force shall prepare and submit a final report that contains a detailed statement of findings, conclusions and recommendations of the task force to the Legislature, the Governor, and to local and tribal governments by October 13, 2017, and the task force shall stand dissolved on December 31, 2017. It is the intention of the Legislature that, given the importance of the matters before the task force, the task force should work toward unanimously supported findings and recommendations. The report submitted under this subsection shall be made available to the public."

Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.'"

**Amendment Notes —** The first 2019 amendment (ch. 312), in (2), deleted (b), which read: "Office of Medical Examiner," redesignated the remaining paragraphs accordingly, and added "which includes the Office of the Medical Examiner" at the end of (c).

The second 2019 amendment (ch. 427) added (6).

## § 45-1-3. Rule-making power of commissioner.

**Editor's Notes. —** Executive Order No. 1474, II., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"II. Pursuant to Miss. Code Ann. § 33-15-31(a), the Commissioner of the Department of Public Safety may execute his authority under Miss. Code Ann. § 45-1-3 to further address any issues that arise as a result of the Driver Service Bureau's limited services during the State of Emergency."

## § 45-1-12. Salaries of certain officers of the Mississippi Highway Safety Patrol and the Mississippi Bureau of Narcotics.

(1) The salaries of all officers of the Mississippi Highway Safety Patrol who have completed the course of instruction in an authorized highway patrol training school on general law enforcement, and are serving as a sworn officer of the Highway Patrol in the enforcement of the laws of the State of Mississippi, including service in the driver's license division and the sworn officers of the Mississippi Bureau of Narcotics, shall be determined and paid in accordance with the scale for officers salaries as provided in this subsection:

**Department of Public Safety Sworn Officers Salary Schedule –**

**2021-2022 Fiscal Year and Thereafter**

| Rank | Years of Experience | | | |
|---|---|---|---|---|
| | Less than 4 | Over 4 | Over 8 | Over 12 |
| Trooper | 39,140 | | | |

| | | | |
|---|---|---|---|
| Trooper FC | 42,230 | | |
| Corporal | | 45,320 | |
| Sergeant | | | 48,410 |

| Rank | Years of Experience | | | |
|---|---|---|---|---|
| | Over 16 | Over 20 | Over 24 | Over 29 |
| Staff Sgt. | 51,500 | | | |
| Sr. Staff Sgt. | | 54,590 | | |
| Sgt. 1st Class | | | 57,680 | 60,770 |

| Rank | Years of Experience | | | | | |
|---|---|---|---|---|---|---|
| | Over 5 | Over 10 | Over 15 | Over 20 | Over 25 | Over 29 |
| Master Sgt. | 54,590 | 57,680 | 60,770 | 63,860 | 66,950 | 70,040 |
| Lieutenant | 63,860 | 66,950 | 70,040 | 73,130 | 76,220 | 79,310 |
| Captain | | 76,220 | 79,310 | 82,400 | 85,490 | 88,580 |
| Major | | | 88,580 | 91,670 | 94,760 | 97,850 |
| Lt. Colonel | | | 97,850 | 100,940 | 104,030 | 107,120 |
| Colonel | | | 115,360 | 115,360 | 115,360 | 115,360 |

**Department of Public Safety/MS Bureau of Narcotics**

**Sworn Officers Salary Schedule**

**2021-2022 Fiscal Year and Thereafter**

| Rank | Years of Experience | | | |
|---|---|---|---|---|
| | Less than 4 | Over 4 | Over 8 | Over 12 |
| LE-Agent I | 39,140 | | | |
| LE-Agent II | | 42,230 | | |
| LE-Agent III | | | 45,320 | |
| LE-Agent IV | | | | 48,410 |

| Rank | Years of Experience | | | |
|---|---|---|---|---|
| | Over 16 | Over 20 | Over 24 | Over 29 |
| LE-Agent V | 51,500 | | | |
| LE-Agent VI | | 54,590 | | |

| Rank | Years of Experience | | | | | |
|---|---|---|---|---|---|---|
| | Over 7 | Over 12 | Over 17 | Over 22 | Over 27 | Over 32 |
| Lieutenant | 63,860 | 66,950 | 70,040 | 73,130 | 76,220 | 79,310 |
| Captain | | 76,220 | 79,310 | 82,400 | 85,490 | 88,580 |
| Major | | | 88,580 | 91,670 | 94,760 | 97,850 |

| | | | | |
|---|---|---|---|---|
| Lt. Colonel | 97,850 | 100,940 | 104,030 | 107,120 |
| Colonel | 115,360 | 115,360 | 115,360 | 115,360 |

(2) All sworn officers in the Mississippi Highway Patrol and the Mississippi Bureau of Narcotics employed on a full-time basis shall be paid a salary in accordance with the above scale. The rank and years of experience of each sworn officer to be used in establishing the salary shall be determined by the rank and years of experience on July 1 of the current fiscal year.

(3) For purposes of applying the rank designation to the above scale, the following job classifications of the State Personnel Board shall be applicable for the Mississippi Highway Patrol:

| **Rank** | **Job Classes** |
|---|---|
| (a) Trooper | DPS-Highway Patrol Officer I |
| | LE-Investigator II |
| (b) Trooper First Class | DPS-Highway Patrol Officer II |
| | LE-Investigator III |
| (c) Corporal | DPS-Highway Patrol Officer III |
| | LE-Investigator IV |
| (d) Sergeant | DPS-Highway Patrol Officer IV |
| | LE-Investigator V |
| (e) Staff Sergeant | DPS-Highway Patrol Officer V |
| (f) Senior Staff Sergeant | DPS-Highway Patrol Officer VI |
| | Tech Spec |
| (g) Master Sgt/Sgt. F/C | DPS-Assistant Inspector |
| | DPS-Highway Patrol Officer VII |
| | DPS-Investigator I |
| | DPS-Supv. Driver Serv. |
| (h) Lieutenant | DPS-Air Operations Officer |
| | DPS-Dir. Corr. Intelligence |
| | DPS-Dist. Executive Officer |
| | DPS-Regional Supv. Driver. Serv. |
| | DPS-Branch Director |
| | LE-Dir/Training |
| | LE-Dist. Investigator |
| (i) Captain | DPS-Staff Officer (MHP) |
| (j) Major | DPS-Bureau Director II |
| (k) Lt. Colonel | DPS-Deputy Administrator; |
| | DPS-Chief of Staff |
| (*l*) Colonel/Chief of Patrol | Dir-Office of MS Hwy Safety Patrol |

(4) For purposes of applying the rank designation to the above scale, the following job classifications of the State Personnel Board shall be applicable for the Mississippi Bureau of Narcotics:

| Rank | Job Classes |
|---|---|
| (a) Agents | LE-Agent I |
| | LE-Agent II |
| | LE-Agent III |
| | LE-Agent IV |
| | LE-Agent V |
| | LE-Agent VI |
| (b) Lieutenant | BN-District Investigator (LT) |
| (c) Captain | BN-District Commander |
| (d) Major | BN-Bureau Director II |
| | Office Director I |
| (e) Lt. Colonel | BN-Deputy Administrator |
| (f) Colonel | Director, Bureau of Narcotics |

(5) In any fiscal year after July 1, 2015, in the event the Legislature provides across-the-board salary increases to state employees whose compensation is paid from the State General Fund and subject to specific appropriation therefor by the Legislature, the State Personnel Board shall revise the salary scale above to provide the same percentage or dollar amount increase as has been appropriated for other state employees.

(6) It shall be the duty of the Mississippi Department of Public Safety to file with the Legislative Budget Office and the State Fiscal Officer such data and information as may be required to enable the said Legislative Budget Office and State Fiscal Officer to budget and distribute the funds necessary to compensate the sworn officers of the Department of Public Safety according to the requirements of the salary scale. Such data and information so filed may be revised from time to time as necessitated to reflect the current number and experience of sworn officers employed by the department.

**HISTORY: Laws, 2015, ch. 486, § 1, eff from and after Jan. 1, 2016; Laws, 2020, ch. 391, § 1, eff from and after July 1, 2020.**

**Amendment Notes** — The 2020 amendment rewrote (1) to revise the salaries of all officers of the Mississippi Highway Safety Patrol and the Mississippi Highway Safety Patrol for the 2021-2022 fiscal year and thereafter.

## § 45-1-17. Crime detection and medical examiner laboratory.

**Editor's Notes** — Laws of 2016, ch. 474, § 1, provides:

"SECTION 1. (1) The Department of Public Safety may lease the building formerly designated as the State Crime Lab to the Hinds County Board of Supervisors for use by the Hinds County Medical Examiner. The building is located in Jackson, Mississippi, and the property upon which it is located shall be more particularly described in the lease agreement.

"(2) As a condition of the lease authorized under subsection (1) of this section, the Hinds County Board of Supervisors shall pay for all utilities, repairs to fixtures and office equipment, and any other needed improvements in lieu of any rent. Additionally,

the Hinds County Board of Supervisors is authorized to enter into an interlocal agreement with the Rankin County Board of Supervisors at the discretion of the Rankin County Board of Supervisors that authorizes the Rankin County Medical Examiner to use the building authorized to be leased under subsection (1) of this section. Rankin County shall not be charged rent beyond its proportional cost of utilities or requested improvements. The Hinds County Board of Supervisors may enter into other interlocal agreements or sublease agreements with other counties subject to Department of Public Safety approval, but shall not charge any rent beyond the cost of utilities and requested improvements that may be attributed to the entity with which the board may enter an agreement.

"(3) Upon the sale, relocation or renovation of the Department of Public Safety's headquarters located at 1900 East Woodrow Wilson Avenue in Jackson, Hinds County, Mississippi, the department shall have the authority to terminate any lease or sublease agreement entered into under this act at least ninety (90) days after the date that written notice of termination of the agreement is submitted to the lessee. The Department of Finance and Administration may also terminate any lease on similar terms. Any lease, sublease or interlocal agreement entered into under this act shall be subject to the Department of Public Safety's right to terminate as described in this subsection."

## § 45-1-29. Mississippi Forensics Laboratory; funding; fees for services.

(1) The Mississippi Forensics Laboratory shall be funded separately from the Department of Public Safety. Any appropriated funds shall be maintained in an account separate from any funds of the Department of Public Safety and shall never be commingled with any funds of the department. However, nothing in this section shall be construed to prohibit the utilization of the combined resources of the Mississippi Forensics Laboratory, the Division of Support Services of the Department of Public Safety or the Mississippi Justice Information Center to efficiently carry out the mission of the Department of Public Safety.

(2) Grants and donations to the Forensics Laboratory may be accepted from individuals, the federal government, firms, corporations, foundations and other interested organizations and societies.

(3) The Commissioner of Public Safety shall establish and the Division of Support Services of the Department of Public Safety shall collect for services rendered proper fees commensurate with the services rendered by the Forensics Laboratory. Those fees shall be deposited into a special fund in the State Treasury to the credit of the Forensics Laboratory and expended in accordance with applicable rules and regulations of the Department of Finance and Administration. Those fees may be used for any authorized expenditure of the Forensics Laboratory except expenditures for salaries, wages and fringe benefits.

(4) Upon every individual convicted of a felony or misdemeanor, every individual who is nonadjudicated on a felony or misdemeanor case under

Section 99-15-26 or 63-11-30(14), and every individual who participates in a pretrial intervention program established under Section 99-15-101 et seq., in a case where the Forensics Laboratory provided forensic science or laboratory services in connection with the case, the court shall impose and collect a separate laboratory analysis fee of Three Hundred Dollars ($300.00), in addition to any other assessments and costs imposed by statutory authority, unless the court finds that undue hardship would result by imposing the fee. All fees collected under this section shall be deposited into the special fund of the Forensics Laboratory created in subsection (3) of this section.

**HISTORY: Laws, 1979, ch. 455, § 3; Laws, 1988, ch. 401; Laws, 2002, ch. 621, § 1; Laws, 2010, ch. 495, § 2; Laws, 2015, ch. 452, § 7, eff from and after July 1, 2015; Laws, 2018, ch. 411, § 1, eff from and after July 1, 2018, eff from and after July 1, 2018; brought forward without change, Laws, 2019, ch. 312 § 3, eff from and after July 1, 2019.**

**Amendment Notes** — The 2018 amendment, in (4), inserted "or misdemeanor" and "or 63-11-30(14)."

The 2019 amendment brought the section forward without change.

## § 45-1-49 Mississippi Highway Patrol Troop K command center in Biloxi, Mississippi, renamed "Commissioner George Landon Phillips District Office."

(1) The Mississippi Department of Public Safety's Highway Patrol District Office, located in Biloxi, Harrison County, Mississippi, which serves as the command center for Troop K of the Mississippi Highway Patrol, shall be named the "Commissioner George Landon Phillips District Office."

(2) The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of George Landon Phillips. The Department of Finance and Administration in conjunction with the Mississippi Department of Public Safety's Highway Patrol Division shall erect or cause to be erected proper lettering or signage on the outdoor facade of the building displaying the official name of the building as the "Commissioner George Landon Phillips District Office."

**HISTORY: Laws, 2019, ch. 318, § 1, eff from and after July 1, 2019.**

# DUI INFORMATION-EXCHANGE IMPROVEMENT ADVISORY COMMITTEE

Sec.
45-1-161. Repealed.

## § 45-1-161. Repealed.

Laws, 2017, ch. 428, § 3, eff from and after passage (approved Apr. 17, 2017).

§ 45-1-161. [Laws, 2016, ch. 457, § 1.]

**Editor Notes** — Former § 45-1-161 created the DUI Information-Exchange Improvement Advisory Committee and provided its membership and duties.

# CHAPTER 2.

# LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DEATH AND DISABILITY BENEFITS TRUST FUNDS

Article 1. Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund. ..... 45-2-1
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## ARTICLE 1.

## LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DEATH BENEFITS TRUST FUND.

Sec.
45-2-1. Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

### § 45-2-1. Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime, whether the officer is on regular duty on full-time status, an auxiliary or reserve officer, or is serving on a temporary or part-time status.

(e) "Cause of death" means any cause of death that would be covered under the Public Safety Officers' Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, generally codified at 42 USCS Chapter 46.

(2)(a) The Department of Public Safety shall make a payment, as provided in this section, in the amount of One Hundred Thousand Dollars ($100,000.00) when a covered individual, while engaged in the performance of the person's official duties, dies or receives accidental or intentional bodily injury that results in the loss of the covered individual's life and such death is the result of a covered cause of death, provided that the death is not the result of suicide and that the bodily injury is not intentionally self-inflicted.

(b) The payment provided for in this subsection shall be made to the beneficiary who was designated in writing by the covered individual, signed by the covered individual and delivered to the employer during the covered individual's lifetime. If no such designation is made, then the payment shall be made to the surviving child or children and spouse in equal portions, and if there is no surviving child or spouse, then to the parent or parents. If a beneficiary is not designated and there is no surviving child, spouse or parent, then the payment shall be made to the covered individual's estate.

(c) The payment made in this subsection is in addition to any workers' compensation or pension benefits and is exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund. The trust fund shall be funded by an initial appropriation of Two Hundred Thousand Dollars ($200,000.00), and shall be comprised of any additional funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Department of Public Safety shall be responsible for the management of the trust fund and the disbursement of death benefits authorized under this section. The Department of Public Safety shall adopt rules and regulations necessary to implement and standardize the payment of death benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section.

**HISTORY: Laws, 1999, ch. 500, § 1; Laws, 2001, ch. 507, § 1; Laws, 2002, ch. 355, § 1; Laws, 2004, ch. 410, § 2; Laws, 2007, ch. 429, § 1; Laws, 2013, ch. 385, § 4; Laws, 2014, ch. 437, § 1; Laws, 2016, ch. 480, § 1, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment added (1)(e); and in (2)(a), substituted "dies or receives" for "is accidentally or intentionally killed or receives," inserted "and such death is the result of a covered cause of death" and substituted "death is not the result" for "killing is not the result."

## ARTICLE 2.

## LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DISABILITY BENEFITS TRUST FUND.

Sec.

45-2-21. Definitions; establishment of death benefits fund; payments from fund; administration of fund; funding of expenses of Law Enforcement Officers and Fire Fighters Disability Benefits Fund; deposit of user charges and fees authorized under this section into State General Fund.

### § 45-2-21. Definitions; establishment of death benefits fund; payments from fund; administration of fund; funding of expenses of Law Enforcement Officers and Fire Fighters Disability Benefits Fund; deposit of user charges and fees authorized under this section into State General Fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section while actively engaged in protecting the lives and property of the citizens of this state when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau, or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to firefighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime.

(2)(a) The Attorney General's office shall make a monthly disability benefit payment equal to thirty-four percent (34%) of the covered individual's regular base salary at the time of injury when a covered individual, while engaged in the performance of the individual's official duties, is accidentally

or intentionally injured in the line of duty as a direct result of a single incident. The benefit shall be payable for the period of time the covered individual is physically unable to perform the duties of the covered individual's employment, not to exceed twelve (12) total payments for any one (1) injury. Chronic or repetitive injury is not covered. Benefits made available under this section shall be in addition to any workers' compensation benefits and shall be limited to the difference between the amount of workers' compensation benefits and the amount of the covered individual's regular base salary. Compensation under this section shall not be awarded where a penal violation committed by the covered individual contributed to the disability or the injury was intentionally self-inflicted.

(b) Payments made under this subsection are exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Disability Benefits Fund. The fund shall be funded by any funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the fund shall be deposited to the credit of the

(4) The Attorney General's office shall be responsible for the management of the fund and the disbursement of disability benefits authorized under this section. The Attorney General shall adopt rules and regulations necessary to implement and standardize the payment of disability benefits under this section, to administer the fund created by this section and to carry out the purposes of this section. The Attorney General's office may expend up to ten percent (10%) of the monies in the fund for the administration and management of the fund and carrying out the purposes of this section.

(5) From and after July 1, 2016, the expenses of the Law Enforcement Officers and Fire Fighters Disability Benefits Fund shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2005, ch. 406, § 1; Laws, 2006, ch. 581, § 1; Laws, 2013, ch. 385, § 5; Laws, 2017, 1st Ex Sess, ch. 7, § 23, eff from and after passage (approved June 23, 2017).**

**Amendment Notes** — The 2017 amendment, effective June 23, 2017, in (3)(a), deleted "Trust" preceding "Fund" in the first sentence and deleted "trust" preceding

"fund" in the second sentence; and in (3)(b) and (c) and (4), deleted "trust" preceding "fund" everytime it appears.

# CHAPTER 6.

# LAW ENFORCEMENT OFFICERS TRAINING PROGRAM

Sec.
45-6-3. Definitions.
45-6-7. Powers of board.
45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.
45-6-13. Reimbursement for attending training program; professional library.
45-6-15. Law Enforcement Officers Training Fund; funding of agency expenses; deposit of monies into State General Fund.
45-6-21. Motorcycle Officers' Training Program Fund created; funding of expenses of Motorcycle Officers Training Program; deposit of user charges and fees authorized under this section into State General Fund.
45-6-23. Initial law enforcement officer certification program and continuing education and training on mental health and behavioral issues.

## § 45-6-1. Legislative findings and intent.

### JUDICIAL DECISIONS

**1. Statutorily mandated training.**

In a Mississippi Tort Claims Act case filed against the town and the chief of police resulting from the chief slapping plaintiff on her bottom while in the workplace, summary judgment was properly granted and her claim against the town for the failure to properly train and/or supervise the chief was properly dismissed because plaintiff failed to provide any legal authority that the town was required to provide training in addition to that training statutorily required by the Mississippi Law Enforcement Training Academy; the town nonetheless provided the chief with some local training before and after the incident; and the chief acted outside the course and scope of his law-enforcement duties when he committed the simple-assault. Harris v. Town of Woodville, 196 So. 3d 1121, 2016 Miss. App. LEXIS 477 (Miss. Ct. App. 2016).

## § 45-6-3. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein, unless the context shall otherwise require:

(a) "Commission" means the Criminal Justice Planning Commission.

(b) "Board" means the Board on Law Enforcement Officer Standards and Training.

(c) "Law enforcement officer" means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state

and/or the ordinances of any political subdivision thereof. The term "law enforcement officer" also includes employees of the Department of Corrections who are designated as law enforcement officers by the Commissioner of Corrections pursuant to Section 47-5-54, and includes those district attorney criminal investigators who are designated as law enforcement officers. However, the term "law enforcement officer" shall not mean or include any elected official or any person employed as a legal assistant to a district attorney in this state, compliance agents of the State Board of Pharmacy, or any person or elected official who, subject to approval by the board, provides some criminal justice related services for a law enforcement agency. As used in this paragraph, "appointed or employed full time" means any person, other than a deputy sheriff or municipal law enforcement officer, who is receiving gross compensation for his or her duties as a law enforcement officer of Two Hundred Fifty Dollars ($250.00) or more per week or One Thousand Seventy-five Dollars ($1,075.00) or more per month; for a deputy sheriff or municipal law enforcement officer, the term "appointed or employed full time" means a deputy sheriff or municipal law enforcement officer who is receiving gross compensation for his or her duties as a law enforcement officer of Four Hundred Seventy-five Dollars ($475.00) or more per week or Two Thousand Fifty Dollars ($2,050.00) or more per month.

(d) "Part-time law enforcement officer" shall mean any person appointed or employed in a part-time, reserve or auxiliary capacity by the state or any political subdivision thereof who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state or the ordinances of any political subdivision thereof. However, the term "part-time law enforcement officer" shall not mean or include any person or elected official who, subject to approval by the board, provides some criminal justice related services for a law enforcement agency. As used in this paragraph, "appointed or employed" means any person, other than a deputy sheriff or municipal law enforcement officer, who is performing such duties at any time whether or not they receive any compensation for duties as a law enforcement officer provided that such compensation is less than Two Hundred Fifty Dollars ($250.00) per week or One Thousand Seventy-five Dollars ($1,075.00) per month; for a deputy sheriff or municipal law enforcement officer, the term "appointed or employed" means a deputy sheriff or municipal law enforcement officer who is performing such duties at any time whether or not they receive any compensation for duties as a law enforcement officer provided that such compensation is less than Four Hundred Seventy-five Dollars ($475.00) per week or Two Thousand Fifty Dollars ($2,050.00) per month.

(e) "Law enforcement trainee" shall mean any person appointed or employed in a full-time, part-time, reserve or auxiliary capacity by the state or any political subdivision thereof for the purposes of completing all the selection and training requirements established by the board to become a

law enforcement officer or a part-time law enforcement officer. Such individuals shall not have the authority to use force, bear arms, make arrests or exercise any of the powers of a peace officer unless:

(i) The trainee is under the direct control and supervision of a law enforcement officer;

(ii) The trainee was previously certified under this chapter; or

(iii) The trainee is a certified law enforcement officer in a reciprocating state.

**HISTORY: Laws, 1981, ch. 474, § 2; Laws, 1990, ch. 434, § 1; Laws, 1992, ch. 531, § 8; Laws, 1993, ch. 416, § 29; Laws, 1996, ch. 422, § 2; Laws, 1998, ch. 394, § 2; Laws, 2003, ch. 490, § 2; Laws, 2004, ch. 388, § 1; Laws, 2007, ch. 510, § 1, eff from and after July 1, 2007; Laws, 2020, ch. ch. 391, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (c) by substituting "or" for "for" so that "the term 'appointed for employed full time' means" reads "the term 'appointed or employed full time' means." The Joint Committee ratified the correction at its October 19, 2020, meeting.

**Amendment Notes —** The 2020 amendment, in (1)(c) and (1)(d), inserted "other than a deputy sheriff or municipal law enforcement officer"; in the fourth sentence of (1)(c), added "for a deputy sheriff or municipal law enforcement officer...officer who is receiving...Two Thousand Fifty Dollars ($2,050.00) or more per month"; and in the third sentence of (1)(d), added "for a deputy sheriff or municipal law enforcement officer...officer who is performing such duties...Two Thousand Fifty Dollars ($2,050.00) per month."

**JUDICIAL DECISIONS**

**1. In general.**

Sheriff, rather than a circuit court, was to make hiring, firing, and compensation changes affecting bailiffs, as bailiffs were deputies of the sheriff. A circuit court order and opinion stating that bailiffs fell under the authority of the judiciary rather than the sheriff were void in part to the extent that they directly violated the Mississippi Constitution and statutory law. Lewis v. Hinds County Circuit Court, 158 So. 3d 1117, 2015 Miss. LEXIS 102 (Miss. 2015).

Police chief's speech in reporting the Mayor of the city to outside law enforcement agencies for misuse of the city gasoline card was not constitutionally protected because, in light of his statutory duties, communicating with outside law enforcement agencies was part of the police chief's job responsibilities. Gibson v. Kilpatrick, 773 F.3d 661, 2014 U.S. App. LEXIS 23330 (5th Cir. Miss. 2014), cert. denied, — U.S. —, 135 S. Ct. 2318, 191 L. Ed. 2d 980, 2015 U.S. LEXIS 3261 (U.S. 2015).

## § 45-6-7. Powers of board.

In addition to the powers conferred upon the board elsewhere in this chapter, the board shall have power to:

(a) Promulgate rules and regulations for the administration of this chapter, including the authority to require the submission of reports and

information by law enforcement agencies of the state and its political subdivisions.

(b) Establish minimum educational and training standards for admission to employment or appointment as a law enforcement officer or a part-time law enforcement officer: (i) in a permanent position; and (ii) in a probationary status. The minimum educational and training standards for any law enforcement officer assigned to field or investigative duties shall include at least two (2) hours of training related to handling complaints of human trafficking and commercial sexual exploitation of children as defined in Section 43-21-105, communicating with such victims, and requiring the officer to contact the Department of Child Protection Services when human trafficking or commercial sexual exploitation is suspected.

(c) Certify persons as being qualified under the provisions of this chapter to be law enforcement officers or part-time law enforcement officers.

(d) Revoke certification for cause and in the manner provided in this chapter. The board is authorized to subpoena documents regarding revocations. The board shall maintain a current list of all persons certified under this chapter who have been placed on probation, suspended, subjected to revocation of certification, or any combination of these.

(e) Establish minimum curriculum requirements for basic and advanced courses and programs for schools operated by or for the state or any political subdivision thereof for the specific purpose of training police and other law enforcement officers, both full- and part-time, which shall include a minimum of two (2) hours of training in a course or courses related to the identification of and support for victims of human trafficking and commercial sexual exploitation.

(f) Consult and cooperate with counties, municipalities, state agencies, other governmental agencies, and with universities, colleges, community and junior colleges and other institutions concerning the development of training schools, programs or courses of instruction for personnel defined in this chapter.

(g) Make recommendations concerning any matter within its purview pursuant to this chapter.

(h) Make such inspection and evaluation as may be necessary to determine if governmental units are complying with the provisions of this chapter.

(i) Approve law enforcement officer training schools for operation by or for the state or any political subdivision thereof for the specific purpose of training personnel defined in this chapter.

(j) Upon the request of agencies employing personnel defined in this chapter, conduct surveys or aid municipalities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(k) Upon request of agencies within the purview of this chapter, conduct general and specific management surveys and studies of the operations of the requesting agencies at no cost to those agencies. The role of the board under this subsection shall be that of management consultant.

(*l*) Adopt and amend regulations consistent with law, for its internal management and control of board programs.

(m) Enter into contracts or do such things as may be necessary and incidental to the administration of this chapter.

(n) Establish jointly with the State Board of Education the minimum level of basic law enforcement training required of persons employed by school districts as school security guards, or school resource officers or in other positions that have the powers of a peace officer.

**HISTORY: Laws, 1981, ch. 474, § 4; Laws, 1990, ch. 434, § 2; Laws, 1998, ch. 394, § 6; Laws, 2000, ch. 437, § 2; Laws, 2009, ch. 539, § 1, eff from and after passage (approved Apr. 15, 2009); Laws, 2019, ch. 420, § 9, eff from and after July 1, 2019.**

**Amendment Notes** — The 2019 amendment added the last sentence of (b); and added "which shall include a minimum...victims of human trafficking and commercial sexual exploitation" at the end of (e).

## § 45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.

(1) Law enforcement officers already serving under permanent appointment on July 1, 1981, and personnel of the Division of Community Services under Section 47-7-9, Mississippi Code of 1972, serving on July 1, 1994, shall not be required to meet any requirement of subsections (3) and (4) of this section as a condition of continued employment; nor shall failure of any such law enforcement officer to fulfill such requirements make that person ineligible for any promotional examination for which that person is otherwise eligible. Provided, however, if any law enforcement officer certified under the provisions of this chapter leaves his employment as such and does not become employed as a law enforcement officer within two (2) years from the date of termination of his prior employment, he shall be required to comply with board policy as to rehiring standards in order to be employed as a law enforcement officer; except, that, if any law enforcement officer certified under this chapter leaves his employment as such to serve as a sheriff, he may be employed as a law enforcement officer after he has completed his service as a sheriff without being required to comply with board policy as to rehiring standards. Part-time law enforcement officers serving on or before July 1, 1998, shall have until July 1, 2001, to obtain certification as a part-time officer.

(2)(a) Any person who has twenty (20) years of law enforcement experience and who is eligible to be certified under this section shall be eligible for recertification after leaving law enforcement on the same basis as someone who has taken the basic training course. Application to the board to qualify under this paragraph shall be made no later than June 30, 1993.

(b) Any person who has twenty-five (25) years of law enforcement experience, whether as a part-time, full-time, reserve or auxiliary officer, and who has received certification as a part-time officer, may be certified as

a law enforcement officer as defined in Section 45-6-3(c) without having to meet further requirements. Application to the board to qualify under this paragraph shall be made no later than June 30, 2009.

(3)(a) No person shall be appointed or employed as a law enforcement officer or a part-time law enforcement officer unless that person has been certified as being qualified under the provisions of subsection (4) of this section.

(b) No person shall be appointed or employed as a law enforcement trainee in a full-time capacity by any law enforcement unit for a period to exceed one (1) year. No person shall be appointed or employed as a law enforcement trainee in a part-time, reserve or auxiliary capacity by any law enforcement unit for a period to exceed two (2) years. The prohibition against the appointment or employment of a law enforcement trainee in a full-time capacity for a period not to exceed one (1) year or a part-time, reserve or auxiliary capacity for a period not to exceed two (2) years may not be nullified by terminating the appointment or employment of such a person before the expiration of the time period and then rehiring the person for another period. Any person, who, due to illness or other events beyond his control, could not attend the required school or training as scheduled, may serve with full pay and benefits in such a capacity until he can attend the required school or training.

(c) No person shall serve as a law enforcement officer in any full-time, part-time, reserve or auxiliary capacity during a period when that person's certification has been suspended, cancelled or recalled pursuant to the provisions of this chapter.

(4) In addition to the requirements of subsections (3), (7) and (8) of this section, the board, by rules and regulations consistent with other provisions of law, shall fix other qualifications for the employment of law enforcement officers, including minimum age, education, physical and mental standards, citizenship, good moral character, experience and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements. Additionally, the board shall fix qualifications for the appointment or employment of part-time law enforcement officers to essentially the same standards and requirements as law enforcement officers. The board shall develop and implement a part-time law enforcement officer training program that meets the same performance objectives and has essentially the same or similar content as the programs approved by the board for full-time law enforcement officers and the board shall provide that such training shall be available locally and held at times convenient to the persons required to receive such training.

(5) Any elected sheriff, constable, deputy or chief of police may apply for certification. Such certification shall be granted at the request of the elected official after providing evidence of satisfaction of the requirements of subsections (3) and (4) of this section. Certification granted to such elected officials shall be granted under the same standards and conditions as established by

law enforcement officers and shall be subject to recall as in subsection (7) of this section.

(6) The board shall issue a certificate evidencing satisfaction of the requirements of subsections (3) and (4) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction or military training equivalent in content and quality to that required by the board for approved law enforcement officer education and training programs in this state, and has satisfactorily passed any and all diagnostic testing and evaluation as required by the board to ensure competency.

(7) Professional certificates remain the property of the board, and the board reserves the right to either reprimand the holder of a certificate, suspend a certificate upon conditions imposed by the board, or cancel and recall any certificate when:

(a) The certificate was issued by administrative error;

(b) The certificate was obtained through misrepresentation or fraud;

(c) The holder has been convicted of any crime involving moral turpitude;

(d) The holder has been convicted of a felony;

(e) The holder has committed an act of malfeasance or has been dismissed from his employing law enforcement agency; or

(f) Other due cause as determined by the board.

(8) When the board believes there is a reasonable basis for either the reprimand, suspension, cancellation of, or recalling the certification of a law enforcement officer or a part-time law enforcement officer, notice and opportunity for a hearing shall be provided in accordance with law prior to such reprimand, suspension or revocation.

(9) Any full- or part-time law enforcement officer aggrieved by the findings and order of the board may file an appeal with the chancery court of the county in which such person is employed from the final order of the board. Such appeals must be filed within thirty (30) days of the final order of the board.

(10) Any full- or part-time law enforcement officer whose certification has been cancelled pursuant to this chapter may reapply for certification, but not sooner than two (2) years after the date on which the order of the board cancelling such certification becomes final.

**HISTORY: Laws, 1981, ch. 474, § 6; Laws, 1990, ch. 434, § 3; Laws, 1992, ch. 415, § 1; Laws, 1993, ch. 584, § 1; Laws, 1994, ch. 516, § 2; Laws, 1998, ch. 394, § 3; Laws, 1999, ch. 506, § 1; Laws, 2009, ch. 539, § 2; Laws, 2013, ch. 425, § 1, eff from and after July 1, 2013; Laws, 2020, ch. 361, § 1, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment, in (6), inserted "or military training."

JUDICIAL DECISIONS

**1. In general.**

Sheriff, rather than a circuit court, was to make hiring, firing, and compensation changes affecting bailiffs, as bailiffs were deputies of the sheriff. A circuit court order and opinion stating that bailiffs fell under the authority of the judiciary rather than the sheriff were void in part to the extent that they directly violated the Mississippi Constitution and statutory law. Lewis v. Hinds County Circuit Court, 158 So. 3d 1117, 2015 Miss. LEXIS 102 (Miss. 2015).

## § 45-6-15. Law Enforcement Officers Training Fund; funding of agency expenses; deposit of monies into State General Fund.

(1)(a) Such assessments as are collected under Section 99-19-73, Mississippi Code of 1972, and contributions, grants and other monies received by the board under the provisions of this chapter shall be deposited in a special fund hereby created in the State Treasury and designated the "Law Enforcement Officers Training Fund," which shall be expended by the board to defray the expenses of the program as authorized and appropriated by the Legislature.

(b) Twenty-five percent (25%) of the assessments collected under Section 99-19-73, Mississippi Code of 1972, shall be deposited into the "Jail Officer Training Account" which is hereby created in the "Law Enforcement Officers Training Fund." The funds in such account shall be expended by the Board on Jail Officer Standards and Training to defray the expenses of the jail officers training program as authorized and appropriated by the Legislature.

(c) Unexpended amounts remaining in the fund and account at the end of the fiscal year shall not lapse into the State General Fund and any interest earned on the fund shall be deposited to the credit of the fund.

(2) The board may accept for any of its purposes and functions under this chapter any and all donations, both real and personal property, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation.

(3) Money authorized and appropriated by the Legislature shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, which shall issue its warrants upon requisitions signed by the proper person, officer or officers of the commission, in the manner provided by law.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1981, ch. 474, § 8; Laws, 1990, ch. 329, § 8; Laws, 1999, ch.**

**482, § 8; Laws, 2000, ch. 515, § 11; Laws, 2016, ch. 459, § 36, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes** — The 2016 amendment added (4) and (5).

**Cross References** — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 45-6-21. Motorcycle Officers Training Program Fund created; funding of expenses of Motorcycle Officers Training Program; deposit of user charges and fees authorized under this section into State General Fund.

(1) There is created in the State Treasury a special fund to be known as the Motorcycle Officers Training Program Fund, which shall be administered by the Office of the Attorney General. The purpose of the fund shall be to provide funding for the training of state and local law enforcement officers, including, but not limited to, motorcycle officers training. All courses provided under the Motorcycle Officers Training Program shall be administered and approved by the Mississippi Law Enforcement Officers Association. Monies in the fund shall be expended by the Attorney General, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Motorcycle Officers Training Program;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) From and after July 1, 2016, the expenses of the Motorcycle Officers Training Program shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(3) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2012, ch. 554, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 24, eff from and after passage (approved June 23, 2017).**

**Amendment Notes** — The 2017 amendment, effective June 23, 2017, added (2) and (3).

## § 45-6-23. Initial law enforcement officer certification program and continuing education and training on mental health and behavioral issues [Effective January 1, 2021].

The Board on Law Enforcement Officer Standards and Training shall promulgate regulations to require education and training components on mental health and behavioral issues to consist of not less than six (6) hours in the initial law enforcement officer certification program and not less than one (1) hour in any required continuing education program for law enforcement officers. The behavioral component will train officers to recognize behavioral characteristics that distinguish conditions such as autism, Asperger's syndrome, or any other mental or medical condition that may present with atypical developmental symptoms which could be perceived by an untrained person as suspicious and which could impede effective communication with a law enforcement officer.

**HISTORY: Laws, 2020, ch. 442, § 2, eff from and after January 1, 2021.**

**Editor's Note —** Laws of 2020, ch. 442, § 3, effective January 1, 2021, provides: "SECTION 3. Section 1 of this act shall be codified in Title 63, Chapter 21, Mississippi Code of 1972. Section 2 of this act shall be codified in Title 45, Chapter 6, Mississippi Code of 1972."

# CHAPTER 9.

# WEAPONS

License to Carry Concealed Pistol or Revolver. ..... 45-9-101
Mississippi Church Protection Act. ..... 45-9-171

## RESTRICTIONS UPON LOCAL REGULATION OF FIREARMS OR AMMUNITION

## § 45-9-55. Employer not permitted to prohibit transportation or storage of firearms on employer property; exceptions; certain immunity for employer.

### JUDICIAL DECISIONS

#### ANALYSIS

0.5. Construction.
1. Wrongful discharge.

**0.5. Construction.**

Access to a lot was restricted and limited within the meaning of this statute's exception because the drop arms at an entry point provided at least a periodic limitation; a security camera was directed at the entry and was monitored from a central security office; security officers continuously patrolled the entire plant, including the lot at issue; barbed-wire-topped, chain-link fence surrounded the entire plant; and there were visible no-trespassing signs posted at all plant en-

trances. McIntyre v. Nissan N. Am., Inc., 960 F.3d 231, 2020 U.S. App. LEXIS 17100 (5th Cir. Miss.), sub. op., 962 F.3d 833, 2020 U.S. App. LEXIS 19738 (5th Cir. Miss. 2020).

Restricting and limiting are not terms that imply impassable barriers. Still, for the provision to be an exception to and not an elimination of employees' rights to possess firearms in vehicles, the means adopted must have a more than negligible impact on access. McIntyre v. Nissan N. Am., Inc., 960 F.3d 231, 2020 U.S. App. LEXIS 17100 (5th Cir. Miss.), sub. op., 962 F.3d 833, 2020 U.S. App. LEXIS 19738 (5th Cir. Miss. 2020).

Federal district court properly granted the motions by an employer and automobile manufacturer for summary judgment in an employee's wrongful discharge action because the statutory exception applied where the manufacturer and the employer both had policies prohibiting firearms on company property, including the parking lots, and the public's access to the manufacturer's lot at issue was "restricted or limited" by a barbed-wire-topped, chain-link fence surrounding the premises and visible no-trespassing signs posted at all entrances, and the manufacturer was not the employee's employer. McIntyre v. Nissan N. Am., Inc., 962 F.3d 833, 2020 U.S. App. LEXIS 19738 (5th Cir. Miss. 2020).

Miss. Const. art. 3, § 12, Miss. Code Ann. § 97-37-1(2), and Miss. Code Ann. § 45-9-55 establish the express legislative action and the State law prohibitions, and an employee may be discharged at the employer's will for good reason, bad reason, or no reason at all, excepting reasons independently declared legally impermissible; an employee is wrongfully discharged if terminated for an act specifically allowed by State law, the prohibition of which is specifically disallowed by statutory law. Swindol v. Aurora Flight Scis. Corp., 194 So. 3d 847, 2016 Miss. LEXIS 131 (Miss. 2016).

**1. Wrongful discharge.**

Where a former employee appealed a district court's dismissal of his wrongful termination claim, based on the response of the Mississippi Supreme Court to a certified question as to the effect of Miss. Code Ann. § 45-9-55, he stated a claim for wrongful discharge under Mississippi law. Swindol v. Aurora Flight Scis. Corp., 832 F.3d 492, 2016 U.S. App. LEXIS 14550 (5th Cir. Miss. 2016).

Subsection (5) did not shield an employer from liability for the wrongful discharge of an employee for storing a firearm in a locked vehicle on company property because it established freedom from liability for the actions of employees or third parties; while in subsection (1) employers cannot enforce policies or rules that had the effect of prohibiting a person from having a firearm in a locked vehicle, it also chose to grant employers immunity should an occurrence result from that prohibition. Swindol v. Aurora Flight Scis. Corp., 194 So. 3d 847, 2016 Miss. LEXIS 131 (Miss. 2016).

Employer was liable for the wrongful discharge of an employee for storing a firearm in a locked vehicle on company property because the Legislature declared that it was legally impermissible for an employer to terminate an employee for having a firearm inside his or her locked vehicle on company property. Swindol v. Aurora Flight Scis. Corp., 194 So. 3d 847, 2016 Miss. LEXIS 131 (Miss. 2016).

Court certified to the Mississippi Supreme Court question of whether in Mississippi employer could be liable for wrongful discharge of employee for storing firearm in locked vehicle on company property in manner that was consistent with Miss. Code Ann. § 45-9-55 because the issue presented an important and determinative question of state law that had not been addressed by Mississippi courts. Swindol v. Aurora Flight Scis. Corp., 805 F.3d 516, 2015 U.S. App. LEXIS 15232 (5th Cir. Miss. 2015).

# LICENSE TO CARRY CONCEALED PISTOL OR REVOLVER

Sec.

45-9-101. License to carry stun gun, concealed pistol or revolver; license fees; exemptions; no license required to carry pistol or revolver in purse, briefcase, fully enclosed case, etc.
45-9-103. Federal firearm reporting.

## § 45-9-101. License to carry stun gun, concealed pistol or revolver; license fees; exemptions; no license required to carry pistol or revolver in purse, briefcase, fully enclosed case, etc.

(1)(a) Except as otherwise provided, the Department of Public Safety is authorized to issue licenses to carry stun guns, concealed pistols or revolvers to persons qualified as provided in this section. Such licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person possessing a valid license issued pursuant to this section may carry a stun gun, concealed pistol or concealed revolver.

(b) The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by summons.

(2) The Department of Public Safety shall issue a license if the applicant:

(a) Is a resident of the state. However, this residency requirement may be waived if the applicant possesses a valid permit from another state, is active military personnel stationed in Mississippi, or is a retired law enforcement officer establishing residency in the state;

(b)(i) Is twenty-one (21) years of age or older; or

(ii) Is at least eighteen (18) years of age but not yet twenty-one (21) years of age and the applicant:

1. Is a member or veteran of the United States Armed Forces, including National Guard or Reserve; and

2. Holds a valid Mississippi driver's license or identification card issued by the Department of Public Safety;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a stun gun, pistol or revolver;

(d) Is not ineligible to possess a firearm by virtue of having been convicted of a felony in a court of this state, of any other state, or of the United States without having been pardoned or without having been expunged for same;

(e) Does not chronically or habitually abuse controlled substances to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses controlled substances to the extent that his faculties are impaired if the applicant has been voluntarily or

involuntarily committed to a treatment facility for the abuse of a controlled substance or been found guilty of a crime under the provisions of the Uniform Controlled Substances Law or similar laws of any other state or the United States relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages to the extent that his normal faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under the laws of this state or similar laws of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself;

(h) Has not been adjudicated mentally incompetent, or has waited five (5) years from the date of his restoration to capacity by court order;

(i) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of five (5) years;

(j) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled;

(k) Is not a fugitive from justice; and

(*l*) Is not disqualified to possess a weapon based on federal law.

(3) The Department of Public Safety may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred prior to the date on which the application is submitted, or may revoke a license if the licensee has been found guilty of one or more crimes of violence within the preceding three (3) years. The department shall, upon notification by a law enforcement agency or a court and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case. The provisions of subsection (7) of this section shall apply to any suspension or revocation of a license pursuant to the provisions of this section.

(4) The application shall be completed, under oath, on a form promulgated by the Department of Public Safety and shall include only:

(a) The name, address, place and date of birth, race, sex and occupation of the applicant;

(b) The driver's license number or social security number of applicant;

(c) Any previous address of the applicant for the two (2) years preceding the date of the application;

(d) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(e) A statement that the applicant has been furnished a copy of this section and is knowledgeable of its provisions;

(f) A conspicuous warning that the application is executed under oath and that a knowingly false answer to any question, or the knowing submission of any false document by the applicant, subjects the applicant to criminal prosecution; and

(g) A statement that the applicant desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself.

(5) The applicant shall submit only the following to the Department of Public Safety:

(a) A completed application as described in subsection (4) of this section;

(b) A full-face photograph of the applicant taken within the preceding thirty (30) days in which the head, including hair, in a size as determined by the Department of Public Safety, except that an applicant who is younger than twenty-one (21) years of age must submit a photograph in profile of the applicant;

(c) A nonrefundable license fee of Eighty Dollars ($80.00). Costs for processing the set of fingerprints as required in paragraph (d) of this subsection shall be borne by the applicant. Honorably retired law enforcement officers, disabled veterans and active duty members of the Armed Forces of the United States shall be exempt from the payment of the license fee;

(d) A full set of fingerprints of the applicant administered by the Department of Public Safety; and

(e) A waiver authorizing the Department of Public Safety access to any records concerning commitments of the applicant to any of the treatment facilities or institutions referred to in subsection (2) and permitting access to all the applicant's criminal records.

(6)(a) The Department of Public Safety, upon receipt of the items listed in subsection (5) of this section, shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing.

(b) The Department of Public Safety shall forward a copy of the applicant's application to the sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence. The sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence may, at his discretion, participate in the process by submitting a voluntary report to the Department of Public Safety containing any readily discoverable prior information that he feels may be pertinent to the licensing of any applicant. The reporting shall be made within thirty (30) days after the date he receives the copy of the application. Upon receipt of a response from a sheriff or police chief, such sheriff or police chief shall be reimbursed at a rate set by the department.

(c) The Department of Public Safety shall, within forty-five (45) days after the date of receipt of the items listed in subsection (5) of this section:

(i) Issue the license;

(ii) Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsections (2) and (3) of this section. If the Department of Public Safety denies the application, it shall notify the applicant in writing, stating the ground for denial, and the denial shall be subject to the appeal process set forth in subsection (7); or

(iii) Notify the applicant that the department is unable to make a determination regarding the issuance or denial of a license within the forty-five-day period prescribed by this subsection, and provide an estimate of the amount of time the department will need to make the determination.

(d) In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of two (2) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name check conducted by the Mississippi Highway Safety Patrol at the request of the Department of Public Safety.

(7)(a) If the Department of Public Safety denies the issuance of a license, or suspends or revokes a license, the party aggrieved may appeal such denial, suspension or revocation to the Commissioner of Public Safety, or his authorized agent, within thirty (30) days after the aggrieved party receives written notice of such denial, suspension or revocation. The Commissioner of Public Safety, or his duly authorized agent, shall rule upon such appeal within thirty (30) days after the appeal is filed and failure to rule within this thirty-day period shall constitute sustaining such denial, suspension or revocation. Such review shall be conducted pursuant to such reasonable rules and regulations as the Commissioner of Public Safety may adopt.

(b) If the revocation, suspension or denial of issuance is sustained by the Commissioner of Public Safety, or his duly authorized agent pursuant to paragraph (a) of this subsection, the aggrieved party may file within ten (10) days after the rendition of such decision a petition in the circuit or county court of his residence for review of such decision. A hearing for review shall be held and shall proceed before the court without a jury upon the record made at the hearing before the Commissioner of Public Safety or his duly authorized agent. No such party shall be allowed to carry a stun gun, concealed pistol or revolver pursuant to the provisions of this section while any such appeal is pending.

(8) The Department of Public Safety shall maintain an automated listing of license holders and such information shall be available online, upon request, at all times, to all law enforcement agencies through the Mississippi Crime Information Center. However, the records of the department relating to applications for licenses to carry stun guns, concealed pistols or revolvers and records relating to license holders shall be exempt from the provisions of the Mississippi Public Records Act of 1983, and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after having a license lost or destroyed, the licensee shall notify the Department of Public Safety in writing of such change or loss. Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by a summons.

(10) In the event that a stun gun, concealed pistol or revolver license is lost or destroyed, the person to whom the license was issued shall comply with the provisions of subsection (9) of this section and may obtain a duplicate, or substitute thereof, upon payment of Fifteen Dollars ($15.00) to the Department of Public Safety, and furnishing a notarized statement to the department that such license has been lost or destroyed.

(11) A license issued under this section shall be revoked if the licensee becomes ineligible under the criteria set forth in subsection (2) of this section.

(12)(a) No less than ninety (90) days prior to the expiration date of the license, the Department of Public Safety shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the department. The licensee must renew his license on or before the expiration date by filing with the department the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and a full set of fingerprints administered by the Department of Public Safety or the sheriff of the county of residence of the licensee.

The first renewal may be processed by mail and the subsequent renewal must be made in person. Thereafter every other renewal may be processed by mail to assure that the applicant must appear in person every ten (10) years for the purpose of obtaining a new photograph.

(i) Except as provided in this subsection, a renewal fee of Forty Dollars ($40.00) shall also be submitted along with costs for processing the fingerprints;

(ii) Honorably retired law enforcement officers, disabled veterans and active duty members of the Armed Forces of the United States shall be exempt from the renewal fee; and

(iii) The renewal fee for a Mississippi resident aged sixty-five (65) years of age or older shall be Twenty Dollars ($20.00).

(b) The Department of Public Safety shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing. The license shall be renewed upon receipt of the completed renewal application and appropriate payment of fees.

(c) A licensee who fails to file a renewal application on or before its expiration date must renew his license by paying a late fee of Fifteen Dollars ($15.00). No license shall be renewed six (6) months or more after its expiration date, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees pursuant to subsection (5) of this section must be submitted, and a background investigation shall be conducted pursuant to the provisions of this section.

(13) No license issued pursuant to this section shall authorize any person to carry a stun gun, concealed pistol or revolver into any place of nuisance as defined in Section 95-3-1, Mississippi Code of 1972; any police, sheriff or highway patrol station; any detention facility, prison or jail; any courthouse; any courtroom, except that nothing in this section shall preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his courtroom; any polling place; any meeting place of the governing body of any governmental entity; any meeting of the Legislature or a committee thereof; any school, college or professional athletic event not related to firearms; any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages; any portion of an establishment in which beer, light spirit product or light wine is consumed on the premises, that is primarily devoted to such purpose; any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity; inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; any church or other place of worship, except as provided in Section 45-9-171; or any place where the carrying of firearms is prohibited by federal law. In addition to the places enumerated in this subsection, the carrying of a stun gun, concealed pistol or revolver may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol or revolver is prohibited." No license issued pursuant to this section shall authorize the participants in a parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver.

(14) A law enforcement officer as defined in Section 45-6-3, chiefs of police, sheriffs and persons licensed as professional bondsmen pursuant to Chapter 39, Title 83, Mississippi Code of 1972, shall be exempt from the licensing requirements of this section. The licensing requirements of this section do not apply to the carrying by any person of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed as defined in Section 97-37-1.

(15) Any person who knowingly submits a false answer to any question on an application for a license issued pursuant to this section, or who knowingly submits a false document when applying for a license issued pursuant to this section, shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in Section 99-19-31, Mississippi Code of 1972.

(16) All fees collected by the Department of Public Safety pursuant to this section shall be deposited into a special fund hereby created in the State Treasury and shall be used for implementation and administration of this section. After the close of each fiscal year, the balance in this fund shall be certified to the Legislature and then may be used by the Department of Public Safety as directed by the Legislature.

(17) All funds received by a sheriff or police chief pursuant to the provisions of this section shall be deposited into the general fund of the county or municipality, as appropriate, and shall be budgeted to the sheriff's office or police department as appropriate.

(18) Nothing in this section shall be construed to require or allow the registration, documentation or providing of serial numbers with regard to any stun gun or firearm.

(19) Any person holding a valid unrevoked and unexpired license to carry stun guns, concealed pistols or revolvers issued in another state shall have such license recognized by this state to carry stun guns, concealed pistols or revolvers. The Department of Public Safety is authorized to enter into a reciprocal agreement with another state if that state requires a written agreement in order to recognize licenses to carry stun guns, concealed pistols or revolvers issued by this state.

(20) The provisions of this section shall be under the supervision of the Commissioner of Public Safety. The commissioner is authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

(21) For the purposes of this section, the term "stun gun" means a portable device or weapon from which an electric current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure, momentarily stun, knock out, cause mental disorientation or paralyze.

(22)(a) From and after January 1, 2016, the Commissioner of Public Safety shall promulgate rules and regulations which provide that licenses authorized by this section for honorably retired law enforcement officers and honorably retired correctional officers from the Mississippi Department of Corrections shall (i) include the words "retired law enforcement officer" on the front of the license, and (ii) that the license itself have a red background to distinguish it from other licenses issued under this section.

(b) An honorably retired law enforcement officer and honorably retired correctional officer shall provide the following information to receive the license described in this section: (i) a letter, with the official letterhead of the agency or department from which such officer is retiring, which explains that such officer is honorably retired, and (ii) a letter with the official letterhead of the agency or department, which explains that such officer has completed a certified law enforcement training academy.

(23) A disabled veteran who seeks to qualify for an exemption under this section shall be required to provide a veterans health services identification card issued by the United States Department of Veterans Affairs indicating a service-connected disability, which shall be sufficient proof of such service-connected disability.

(24) A license under this section is not required for a loaded or unloaded pistol or revolver to be carried upon the person in a sheath, belt holster or shoulder holster or in a purse, handbag, satchel, other similar bag or briefcase or fully enclosed case if the person is not engaged in criminal activity other than a misdemeanor traffic offense, is not otherwise prohibited from possess-

ing a pistol or revolver under state or federal law, and is not in a location prohibited under subsection (13) of this section.

**HISTORY: Laws, 1991, ch. 609, § 1; Laws, 1997, ch. 470, § 1; Laws, 2004, ch. 430, § 1; Laws, 2007, ch. 507, § 1; Laws, 2008, ch. 459, § 1; Laws, 2009, ch. 518, § 1; Laws, 2010, ch. 480, § 2; Laws, 2012, ch. 372, § 1; Laws, 2013, ch. 307, § 2; Laws, 2013, ch. 308, § 4; Laws, 2014, ch. 307, § 1; Laws, 2015, ch. 433, § 2; Laws, 2015, ch. 445, § 1; Laws, 2016, ch. 421, § 2, eff from and after passage (approved Apr. 15, 2016); Laws, 2020, ch. 314, § 61, eff from and after passage (approved June 18, 2020); Laws, 2020, ch. 408, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 61 of Chapter 314, Laws of 2020, effective from and after passage (approved June 18, 2020), amended this section. Section 1 of Chapter 408, Laws of 2020, effective from and after July 1, 2020 (approved June 29, 2020), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

**Editor's Notes. —** Executive Order No. 1474, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provisions of Miss. Code Ann. §§ 63-1-47, 63-1-6, 63-1-21, 45-9-101, 97-37-7, and 45-35-55 are hereby suspended to the extent necessary to delay the expiration of all valid driver's licenses, learner's permits, intermediate licenses, firearm permits, security guard permits and ID cards set to expire between March 14-2020 and June 30, 2020. Such licenses, permits and ID cards will instead expire on August 3, 2020."

**Amendment Notes —** The 2016 amendment deleted "and has been a resident for twelve (12) months or longer immediately preceding the filing of the application" following "state" at the end of the first sentence of (2)(a); inserted "except as provided in Section 45-9-171" in the first sentence of (13); and rewrote (24), which read: "No license shall be required under this section for a loaded or unloaded pistol or revolver carried in a purse, handbag, satchel, other similar bag or briefcase or fully enclosed case."

The first 2020 amendment (ch. 314), effective June 18, 2020, inserted "light spirit product" in (13).

The second 2020 amendment (ch. 408), in (2)(d), inserted "or without having been expunged"; and rewrote (23), which read: "A disabled veteran who seeks to qualify for an exemption under this section shall be required to provide, as proof of service-connected disability, verification from the United States Department of Veterans Affairs."

## § 45-9-103. Federal firearm reporting.

(1) In this section, "federal prohibited-person information" means information that identifies an individual as:

(a) A person who has been judicially determined by a court as a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treat-

ment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) A person acquitted in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) An adult individual for whom a court has appointed a guardian or conservator under Article 2, 3 or 4 of Title 93, Chapter 20, Mississippi Code of 1972, based on the determination that the person is incapable of managing his own person or estate; or

(d) A person determined to be incompetent to stand trial by a court pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice.

(2) The Department of Public Safety by rule shall establish a procedure to provide federal prohibited-person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited-person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(3) The department shall grant access to a person's own federal prohibited-person information to the person who is the subject of the information.

(4) Federal prohibited-person information maintained by the department is confidential information for the use of the department and, except as otherwise provided by this section and other state law, is not a public record and may not be disseminated by the department.

(5) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:

(a) A copy of a judicial order or finding under Section 93-20-318 or 93-20-430 that a person has been restored to reason;

(b) Proof that the person has obtained notice of relief from disabilities under 18 USC, Section 925; or

(c) A copy of a judicial order of relief from a firearms disability under Section 97-37-5(4).

**HISTORY: Laws, 2013, ch. 384, § 1, eff from and after July 1, 2013; Laws, 2019, ch. 463, § 4, eff from and after January 1, 2020.**

**Amendment Notes** — The 2019 amendment, effective January 1, 2020, in (1)(c), substituted "Article 2, 3 or 4 of Title 93, Chapter 20, Mississippi Code of 1972" for "Title 93, Chapter 13," and "managing his own person or estate; or" for "managing his own estate due to mental weakness; or"; and substituted "Section 93-20-318 or 93-20-430" for "Section 93-13-151" in (5)(a).

# MISSISSIPPI CHURCH PROTECTION ACT

Sec.
45-9-171. Mississippi Church Protection Act; security program requirements.

## § 45-9-171. Mississippi Church Protection Act; security program requirements.

(1) This section shall be known and may be cited as the "Mississippi Church Protection Act."

(2)(a) The governing body of any church or place of worship may establish a security program by which designated members are authorized to carry firearms for the protection of the congregation of the church or place of worship, including resisting any unlawful attempt to commit a violent felony listed in Section 97-3-2(1) upon a member or other attendee in the church or place of worship or on the immediate premises thereof. A church or place of worship may establish a security program that meets the requirements of subsection (2)(b) of this section, and a member of the security program shall be immune from civil liability for any action taken by a member of the security program if the action in question occurs during the reasonable exercise of and within the course and scope of the member's official duties as a member of the security program for the church or place of worship. For purposes of this section, "church" or "place of worship" means only a bona fide duly constituted religious society, ecclesiastical body, or any congregation thereof.

(b) In order to be eligible for the immunity provided in this section:

(i) The program at a minimum must require that each member of the program possesses a firearms license issued under Section 45-9-101 and has completed an instructional course in the safe handling and use of firearms as described in Section 97-37-7, or a law enforcement officer as defined in Section 45-6-3, or is a qualified retired law enforcement officer as defined in 18 U.S.C. Section 926C(c). The program may also include one or more persons with law enforcement or military background who may assist the church or place of worship in training of the members of the program and who shall be required to have a license, or be a law enforcement officer or qualified retired law enforcement officer, whichever is applicable, as described in this paragraph (i) in order to be eligible for immunity;

(ii) The qualified retired law enforcement officers as defined in 18 U.S.C. Section 926C(c) or the Mississippi firearm license numbers of the members who are designated by the church or place of worship to serve in the security program must be spread upon the minutes of the body or otherwise noted in writing at the time of the member's designation if the body does not maintain minutes, and this written record must be made available to law enforcement upon request during the course of an investigation after any incident in which the member used a firearm while acting as a member of the security program; and

(iii) The member of the program who is claiming immunity under the provisions of this section must have met the requirements of this paragraph (b).

(3) A person who is indicted or charged with a violation of criminal law while acting as a member of a security program of a church or place of worship may assert as a defense, in addition to any other defense available, that at the time of the action in question, the person was a member of a church body or place of worship security program, was then actually engaged in the performance of the person's duties as a member of the program, and had met the requirements of this section at the time of the action in question.

**HISTORY: Laws, 2016, ch. 421, § 1, eff from and after passage (approved Apr. 15, 2016); Laws, 2019, ch. 365, § 1, eff from and after July 1, 2019; Laws, 2020, ch. 398, § 1, eff from and after passage (approved June 29, 2020).**

**Amendment Notes —** The 2019 amendment rewrote the first sentence of (2)(b)(i), which read: "The program at a minimum must require that each participant of the program possesses a firearms permit issued under Section 45-9-101 and has completed an instructional course in the safe handling and use of firearms as described in Section 97-37-7."

The 2020 amendment, effective June 29, 2020, in (2)(b)(i), substituted "firearms license" for "firearms permit" and "Section 97-37-7, or a law" for "Section 97-37-7, is a law" in the first sentence, and added "and who shall be required...in order to be eligible for immunity" at the end; and in (2)(b)(ii), substituted "The qualified retired law enforcement officers as defined in 18 U.S.C. Section 926C(c) or the Mississippi firearm license numbers of the members who are designated" for "The names of the members designated" and "course of an investigation after any incident" for "course of investigation after an incident."

# CHAPTER 11.

# FIRE PROTECTION REGULATIONS, FIRE PROTECTION AND SAFETY IN BUILDINGS

State Chief Deputy Fire Marshal and State Firefighter's School. ..... 45-11-1

## STATE CHIEF DEPUTY FIRE MARSHAL AND STATE FIREFIGHTER'S SCHOOL

Sec.

45-11-3. Proceedings in regard to dangerous or hazardous inflammable condition existing in building; funding of agency expenses; deposit of monies into State General Fund.

45-11-5. Tax on gross premium receipts of fire insurance policies to defray expenses of office of state chief deputy fire marshal and state fire academy; additional funding for municipal fire protection fund and county volunteer fire department fund; defrayal of agency expenses by appropriation from General Fund; deposit of monies into State General Fund.

Sec.
45-11-7. State fire academy; executive director; division of fire services development; defrayal of agency expenses by appropriation from General Fund; deposit of monies into State General Fund; designation as authorized training program; authorization to provide initial and national continued competency program training.

## § 45-11-3. Proceedings in regard to dangerous or hazardous inflammable condition existing in building; funding of agency expenses; deposit of monies into State General Fund.

Whenever the State Chief Deputy Fire Marshal, or his authorized representative, shall be advised by interested persons of a dangerous or hazardous inflammable condition existing in any building that would tend to impair the safety of persons or property, he shall take proper proceedings, including furnishing of all information in regard thereto to the Attorney General who shall, if he finds such evidence sufficient, bring injunctive proceedings to have the condition corrected. Provided that this section may not apply in any instance where local fire departments or other local agencies have the authority to correct such conditions.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2663; Hemingway's 1917, § 5129; 1930, § 5192; 1942, § 5702; Laws, 1964, ch. 421, § 3; Laws, 1988, ch. 584, § 3; Laws, 2016, ch. 459, § 8, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 45-11-5. Tax on gross premium receipts of fire insurance policies to defray expenses of office of state chief deputy fire marshal and state fire academy; additional funding for municipal fire protection fund and county volunteer fire department fund; defrayal of agency expenses by appropriation from General Fund; deposit of monies into State General Fund.

(1) Any expense, including office supplies, counsel fees, expenses of

deputy, detective and officers, incurred by the Commissioner of Insurance in the performance of the duties imposed upon him by Sections 45-11-1 and 45-11-3, and the operation of the State Fire Academy, as provided in Section 45-11-7, shall be defrayed by all insurance companies, including stock, mutuals and reciprocals writing fire insurance, including the fire insurance components of automobile insurance, dwelling multiple peril insurance, farm multiple peril insurance and commercial multiple peril insurance, doing business in this state; and a tax of one-half of one percent (½ of 1%) of the gross premium receipts of these fire insurance policies is hereby levied for this purpose to be collected by the State Tax Commission in the same manner as the general tax on premiums is collected as provided in Section 25-15-107. In the case of indivisible multiple peril insurance policies when the fire portion of the policy is not specified, a tax of one-half of one percent (½ of 1%) is hereby levied on forty-five percent (45%) of the gross premium receipts of these policies.

(2) There is created a separate account known as the "State Fire Academy Fund" for support of the State Fire Academy. Not later than the fifteenth of the month succeeding the month in which taxes under subsection (1) are collected, the State Treasurer shall transfer into this account all taxes collected under subsection (1) for the operation of the State Fire Academy. The annual expenditure for the operation of the academy shall not exceed the amount in the account; however, any unexpended funds remaining in the account at the close of the fiscal year may be carried over for use in the ensuing years.

(3)(a) A tax of one-half of one percent (½ of 1%) is hereby levied on the gross premium receipts of all insurance policies taxed in subsection (1).

(b) Not later than the fifteenth day of each month, the State Treasurer shall disburse the revenue from the tax levied in this subsection as follows:

(i) Fifty percent (50%) shall be transferred into the Municipal Fire Protection Fund in Section 83-1-37; and

(ii) Fifty percent (50%) shall be transferred to the County Volunteer Fire Department Fund in Section 83-1-39.

(4) All taxes shall be deposited into the Treasury as provided in Section 7-7-21. The tax commission shall keep separate accounts of all taxes collected under this section and shall include these accounts in its annual report.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2665; Hemingway's 1917, § 5131; 1930, § 5194; 1942, § 5704; Laws, 1932, ch. 244; Laws, 1934, ch. 298; Laws, 1938, ch. 197; Laws, 1950, ch. 411; Laws, 1962, ch. 463, § 1; Laws, 1964, ch. 471, § 4; Laws, 1966, ch. 531, § 1; Laws, 1974, ch. 442 § 1; Laws, 1980, ch. 354; Laws, 1982, ch. 351, § 8; Laws, 1984, ch. 478, § 29; Laws, 1985, ch. 538, § 1; Laws, 1988, ch. 584, § 4; Laws, 1990 Ex Sess, ch. 62, § 1; Laws, 1994, ch. 502, § 3; Laws, 1994, ch. 577, § 1; Laws, 2016, ch. 459, § 9, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:
"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added (5) and (6).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 45-11-7. State fire academy; executive director; division of fire services development; defrayal of agency expenses by appropriation from General Fund; deposit of monies into State General Fund; designation as authorized training program; authorization to provide initial and national continued competency program training.

(1) There is hereby created a State Fire Academy for the training and education of persons engaged in municipal, county and industrial fire protection. The Commissioner of Insurance shall appoint an Executive Director of the State Fire Academy who, along with his employees, shall be designated as a division of the Insurance Department. The executive director shall serve at the pleasure of the Commissioner of Insurance. The State Fire Academy shall be under the supervision and direction of the Executive Director of the State Fire Academy. State Fire Academy training programs for fire personnel shall be conducted at the academy with seminars to be conducted in other sections of the state as and when the State Fire Academy Advisory Board considers it necessary and advisable.

The Commissioner of Insurance may establish and charge reasonable fees for the training programs and other services provided by the academy. A record of all funds received pursuant to this paragraph shall be maintained as is required for other monies pursuant to Section 45-11-5.

The Executive Director of the State Fire Academy is authorized and empowered to purchase, operate and maintain mobile firefighting equipment as he may find necessary and proper for the operation of the academy subject to approval of the Commissioner of Insurance. The equipment may be utilized wherever training sessions may be held at the discretion of the State Fire Academy Advisory Board.

(2) The Commissioner of Insurance shall be authorized to undertake appropriate action to accomplish and fulfill the purposes of the State Fire Academy, including the hiring of instructors and personnel, the lease and purchase of appropriate training equipment and to lease, purchase or construct suitable premises and quarters for conducting annual school and seminars, as the State Fire Academy Advisory Board may deem necessary and required for such purposes. Any contract entered into under and by virtue of the provisions of this section shall first be submitted to and approved by the Public Procurement Review Board, and construction pursuant to the contract shall be under the supervision of the Governor's Office of General Services.

(3) Vouchers for operating expense for the State Fire Academy shall be signed by the Executive Director of the State Fire Academy and payment thereof shall be made from such funds to be derived from a special allocation from the State Fire Academy Fund as provided in Section 45-11-5.

(4) The State Fire Academy is hereby officially designated as the agency of this state to conduct training for fire personnel on a statewide basis in which members of all duly constituted fire departments may participate. This subsection shall not be construed to affect the authority of any fire department to conduct training for its own personnel.

(5) Each state agency, private agency or federal agency which provides training for the fire service shall coordinate such efforts with the State Fire Academy to prevent duplication of cost and to insure standardization of training.

(6) The State Fire Academy shall present an appropriate certificate signifying the successful completion of its prescribed courses.

(7) National firefighter standards approved by the Mississippi Fire Personnel Minimum Standards and Certification Board shall be used as the basis for classroom instruction at the fire academy.

(8) The Commissioner of Insurance, Executive Director of the State Fire Academy, and the Mississippi Fire Personnel Minimum Standards and Certification Board shall coordinate all state programs related to fire department operations.

(9) The Commissioner of Insurance is hereby authorized and empowered to establish standard guidelines for the use of, and accountability for, municipal and county fire protection funds distributed pursuant to the provisions of Sections 83-1-37 and 83-1-39, Mississippi Code of 1972. Such guidelines shall include requirements for the establishment of record keeping and reports to the Commissioner of Insurance by municipalities and counties relating to the receipt and expenditure of fire protection funds, the training of fire department personnel and the submission to the Commissioner of Insurance of other data reasonably related to local fire protection responsibilities which the Commissioner of Insurance deems necessary for the performance of the duties of the State Fire Academy Advisory Board.

(10) In order that the Commissioner of Insurance may more effectively execute the duties imposed upon him by subsection (9) of this section, there is hereby created within the State Fire Academy a Division of Fire Services Development. The division shall be staffed by a Fire Services Development Coordinator, appointed by the executive director of the academy from his current staff and by such other personnel as deemed by the Commissioner of Insurance. The division shall work with municipal and county fire coordinators to ensure effective implementation of guidelines established pursuant to subsection (9) of this section and shall serve in an advisory capacity for all aspects of fire service improvement. The Fire Service Coordinator shall annually notify the Department of Finance and Administration of those municipalities and counties which are not eligible to receive a portion of fire protection fund distributions because of failure to comply with requirements

imposed in Sections 83-1-37 and 83-1-39 as a prerequisite to receipt of such funds.

(11) There is created in the State Treasury a separate account to be known as the "State Fire Academy Construction Fund." The State Treasurer shall transfer on July 1, 1997, the sum of Six Hundred Seventy-five Thousand Dollars ($675,000.00) and on July 1, 1998, the sum of Six Hundred Seventy-five Thousand Dollars ($675,000.00) from the State Fire Academy Fund 3502 into the separate account created in this subsection. Monies in such account shall be expended solely, upon legislative appropriations, to defray expenses related to the construction of capital improvements project known as "Fire Safety and Education Building" and parking areas at the State Fire Academy by the Bureau of Building, Grounds and Real Property Management of the Office of General Services and to pay any indebtedness incurred to accomplish such construction. Funds not used after the completion of this capital improvements project shall be transferred back into State Fund 3502.

(12) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(13) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

(14) The State Fire Academy is designated as an authorized training program for Emergency Medical Response and Emergency Medical Technician, and is authorized to provide initial and national continued competency program training, including Emergency Medical Responder, Emergency Medical Technician-Basic and Emergency Medical Technician-Advanced. The State Fire Academy shall be limited to a total of one hundred twenty (120) students per year for such Emergency Medical Responder, Emergency Medical Technician-Basic and Emergency Medical Technician Advanced training. The training program established by the State Fire Academy shall meet or exceed the requirements of the most current training program national standard curriculum as developed by the United States Department of Transportation, National Highway Traffic Safety Administration, and shall also meet the minimum testing and certification requirements established by the State Board of Health. Successful graduates of the State Fire Academy Emergency Medical Response and Emergency Medical Technician training shall be eligible for certification by the State Board of Health for the training level achieved, provided that their training meets or exceeds the minimum testing and certification requirements established by the State Board of Health for these respective skills, and such certification may be obtained in coordination with the State Board of Health pursuant to Chapters 59 and 60, Title 41, Mississippi Code of 1972.

**HISTORY: Codes, 1942, § 5704.5; Laws, 1962, ch. 541, §§ 1-6; Laws, 1966, ch. 531, § 2; Laws, 1971, ch. 441, § 1; Laws, 1973, ch. 413, § 1; Laws, 1977, ch. 380; Laws, 1980, ch. 327; Laws, 1984, ch. 488, § 214; Laws, 1985, ch. 538, § 2; Laws,**

**1988, ch. 584, § 5; Laws, 1992, ch. 529, § 3; Laws, 1997, ch. 559, § 1; Laws, 2016, ch. 459, § 10, eff from and after July 1, 2016; Laws, 2020, ch. 432, § 1, eff from and after July 1, 2020.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added (12) and (13).

The 2020 amendment added (14).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

**JUDICIAL DECISIONS**

**ANALYSIS**

1. Contempt.
2. Exhaustion of administrative remedies.

**1. Contempt.**

Circuit court properly denied a trainee's motion to cite the State Fire Academy for contempt of court because any grievance the trainee could have with his certificate was a separate administrative issue, which the Legislature expressly conferred upon the Academy, completely outside the circuit court's order; thus, the trainee could not use his motion for contempt, based on that order, to prompt judicial review of the Academy's decision. Fillingame v. State, 187 So. 3d 155, 2015 Miss. App. LEXIS 364 (Miss. Ct. App. 2015), cert. denied, 186 So. 3d 854, 2016 Miss. LEXIS 129 (Miss. 2016).

**2. Exhaustion of administrative remedies.**

Dismissal of a cause of action brought by a firefighter trainee who sought certification upon the completion of a training program at a firefighter academy was appropriate because the circuit court lacked subject-matter jurisdiction in that the firefighter trainee did not exhaust the firefighter trainee's administrative remedies before seeking relief from the circuit court. Fillingame v. Miss. State Fire Acad., 217 So. 3d 686, 2016 Miss. App. LEXIS 582 (Miss. Ct. App. 2016), cert. denied, 214 So. 3d 1060, 2017 Miss. LEXIS 164 (Miss. 2017).

## UNIFORM MINIMUM TRAINING STANDARDS FOR FIREFIGHTERS

### § 45-11-201. Legislative findings and intent; minimum standards for training.

**JUDICIAL DECISIONS**

**1. Contempt.**

Circuit court properly denied a trainee's motion to cite the State Fire Academy for contempt of court because any grievance the trainee could have with his certificate was a separate administrative issue, which the Legislature expressly conferred upon the Academy, completely outside the circuit court's order; thus, the trainee could not use his motion for contempt, based on that order, to prompt judicial review of the Academy's decision. Fillingame v. State, 187 So. 3d 155, 2015 Miss. App. LEXIS 364 (Miss. Ct. App. 2015), cert. denied, 186 So. 3d 854, 2016 Miss. LEXIS 129 (Miss. 2016).

## MISSISSIPPI FIRE PERSONNEL MINIMUM STANDARDS AND CERTIFICATION BOARD

### § 45-11-253. Functions, powers, and duties of Board.

#### JUDICIAL DECISIONS

**1. Exhaustion of administrative remedies.**

Dismissal of a cause of action brought by a firefighter trainee who sought certification upon the completion of a training program at a firefighter academy was appropriate because the circuit court lacked subject-matter jurisdiction in that the firefighter trainee did not exhaust the firefighter trainee's administrative remedies before seeking relief from the circuit court. Fillingame v. Miss. State Fire Acad., 217 So. 3d 686, 2016 Miss. App. LEXIS 582 (Miss. Ct. App. 2016), cert. denied, 214 So. 3d 1060, 2017 Miss. LEXIS 164 (Miss. 2017).

# CHAPTER 14.

# RADIATION PROTECTION PROGRAM

Mississippi Radiation Protection Law of 1976. ..... 45-14-1

## MISSISSIPPI RADIATION PROTECTION LAW OF 1976

Sec.
45-14-31. Fees for radiological health services.

### § 45-14-31. Fees for radiological health services.

(1) All initial application and registration fees and annual fees due under this section shall be paid directly to the agency for deposit into the Radiological Health Operations Fund in the State Treasury. The Mississippi State Board of Health shall submit its separate budget for carrying out the provisions of this chapter. The budget shall be subject to and shall comply with the requirements of the state budget law.

(2) In order to supplement state radiological health budget allocations authorized to carry out and enforce the provisions of this chapter, the agency is authorized to charge and collect fees for the following radiological health services:

(a) Radiological health services — Category 1: application fee and annual fee not to exceed ..... $3,500.00

(b) Radiological health services — Category 2: application fee and annual fee not to exceed ..... $1,800.00

(c) Radiological health services — Category 3: application fee and annual fee not to exceed ..... $1,800.00

(d) Healing arts and veterinary medicine X-ray tubes: application fee and annual fee not to exceed ..... $150.00

The radiological health services that are included in each specified

category shall be determined by the agency by rules and regulations adopted by the agency.

The agency may increase the amount of the fees charged under this subsection not more than two (2) times during the period from July 1, 2016, through June 30, 2020, with the percentage of each increase being not more than five percent (5%) of the amount of the fee in effect at the time of the increase.

(3) The agency shall set the amount of the fees for all other radiological health services not specified in subsection (2) of this section, and any increase in the fees charged by the agency under this subsection shall be in accordance with the provisions of Section 41-3-65.

**HISTORY: Laws, 1976, ch. 469, § 16; Laws, 1979, ch. 341; Laws, 1984, ch. 488, § 215; Laws, 1986, ch. 371, § 16; Laws, 1990, ch. 376, § 1; Laws, 1991, ch. 606, § 10; Laws, 2000, ch. 429, § 1; Laws, 2006, ch. 389, § 1; Laws, 2016, ch. 510, § 37, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 37, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment divided the former first paragraph into (1) and the introductory paragraph of (2), and therein substituted "fees for the following radiological health services" for "fees in accordance with the following schedules" at the end; in (2), added (a) through (d) and the last two paragraphs; added (3); and deleted the schedule of fees for radioactive material licenses, general license devices, x-ray tubes, industrial radiography x-ray registrations, radiation machines servicing, accelerators, neutron generator registrations, nuclear reactors, out of state licenses, registrants and permittees, and tanning equipment.

The 2020 amendment reenacted the section without change.

# CHAPTER 19.

# SUBVERSIVE GROUPS AND SUBVERSIVE ACTIVITIES

Sec.
45-19-51 through 45-19-65. Repealed.

## §§ 45-19-51 through 45-19-65. Repealed.

Repealed by Laws of 2017, ch. 402, § 16, effective July 1, 2017.

§§ 45-19-51 through 45-19-65. [Codes, 1942, §§ 4194-01 to 4194-08; Laws, 1958, ch. 484, § 1 through 8, eff from and after passage (approved May 8, 1958).]

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the repealer for Sections 45-19-51 through 45-19-65, Section 16 of Chapter 402, Laws of 2017, by substituting "SECTION 16. Sections . . . 45-19-57 . . . are hereby repealed" for "SECTION 16. Sections . . . 45-19-7 . . . are hereby repealed." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** Former § 45-19-51 related to the powers of the Secretary of State as to subversive groups.

Former § 45-19-53 required officers, directors or members of organizations described in former § 45-19-51 to file list of all members and officers of the organization.

Former § 45-19-55 prohibited individuals from holding or attending meetings of organizations described in § 45-19-51 unless the list required by § 45-19-53 had been filed with the Secretary of State.

Former § 45-19-57 directed district attorneys to prosecute violations of the chapter.

Former § 45-19-59 directed the Attorney General to proceed to dissolve subversive groups.

Former § 45-19-61 made the chapter inapplicable to churches and national guard organizations.

Former § 45-19-63 defined who was to be deemed a member of a subversive group.

Former § 45-19-65 provided that membership lists were to be kept as part of the permanent public records of the Secretary of State's office.

# CHAPTER 23.

# BOILER AND PRESSURE VESSEL SAFETY

Sec.

45-23-7. Repealed.
45-23-9. Rules and regulations.
45-23-23. Examination for inspectors.
45-23-41. Procedure in general by companies employing special inspectors; exemption.
45-23-45. Statement by company covered by owner or user inspection service; filing fee.
45-23-53. Fees where inspection made by chief inspector or his deputy.

## § 45-23-7. Repealed.

Repealed by Laws of 2017, ch. 402, § 9, effective July 1, 2017.

§ 45-23-7. [Laws, 1974, ch. 500, § 3; Laws, 1983, ch. 522, § 43, eff from and after July 1, 1983.]

**Editor's Notes —** Former § 45-23-7 established a Technical Advisory Committee of Boiler and Pressure Vessel Safety.

## § 45-23-9. Rules and regulations.

(1) The State Board of Health (hereinafter board) shall adopt definitions, rules and regulations for the safe construction, installation, inspection, care and good practice in the operation, maintenance and repair of boilers and pressure vessels.

(a) The definitions, rules and regulations so formulated for new construction shall be based upon and at all times follow the generally accepted nationwide engineering standards, formulae and practices established and pertaining to boiler and pressure vessel construction and safety, and the board shall at its first meeting adopt an existing published codification thereof known as the Boiler and Pressure Vessel Code of the American

Society of Mechanical Engineers (hereinafter ASME), with the amendments, code cases and interpretations thereto made and approved by ASME, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority; and when so adopted, the same shall be deemed incorporated into and to constitute a part of the whole of the definitions, rules and regulations of the committee. Amendments, code cases and interpretations to the code so adopted shall be effective immediately upon being promulgated, to the end that the definitions, rules and regulations shall at all times follow the generally accepted nationwide engineering standards.

(b) The board shall adopt rules and regulations for the inspection, care and good practice in operation, maintenance and repair of boilers and pressure vessels which were in use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations become effective, or during the twelve-month period immediately thereafter. The rules and regulations so formulated and recommended shall be based upon and at all times follow the generally accepted nationwide engineering standards.

(2) The rules and regulations and any subsequent amendments thereto adopted by the board shall, immediately following a hearing upon not less than thirty (30) day's notice as hereinafter provided, be approved and published and when so promulgated shall have the force and effect of law, except that the rules applying to the construction of new boilers and pressure vessels shall not become mandatory until twelve (12) months after their promulgation by the board. Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve (12) months after their promulgation.

(3) Notice of the hearing shall give the time and place of the hearing and shall state the matters to be considered. Such notice shall be given to all persons directly affected by such hearing. In the event all persons directly affected are unknown, notice shall be perfected by publication in a newspaper of general circulation in the Northern, Central and Southern Supreme Court Districts of this state at least thirty (30) days prior to such hearing.

**HISTORY: Laws, 1974, ch. 500, § 4; Laws, 2017, ch. 404, § 4, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment, throughout the section, substituted "State Board of Health" and "board" for "advisory committee," and substituted "adopt" for "recommend the adoption of" and "recommend"; and substituted "during the twelve-month period" for "during the twelve (12) month period" in the next-to-last sentence of (1)(b).

## § 45-23-23. Examination for inspectors.

(1) The examination for chief, deputy or special inspector shall be in writing and shall be by the merit system of the board under the rules of procedure during the examination. Application for examination shall be in

writing on forms provided by the board and shall be accompanied by a fee of Twenty-five Dollars ($25.00). Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. Such examination shall be confined to questions, the answers to which will aid in determining the fitness and competency of the applicant for the intended service.

(2) In case an applicant for an inspector's license fails to pass the examination, he may appeal to the merit system of the board for another examination which shall be given by the board within ninety (90) days.

(3) The record of an applicant's examination shall be accessible to the applicant and his employer.

**HISTORY: Laws, 1974, ch. 500, § 11; Laws, 1978, ch. 521, § 2; Laws, 2016, ch. 510, § 38, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 38, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the third sentence of (1); and made a minor stylistic change.

The 2020 amendment reenacted the section without change.

## § 45-23-41. Procedure in general by companies employing special inspectors; exemption.

Each company employing special inspectors, except a company operating boilers and/or pressure vessels covered by owner or user inspection service meeting the requirements of Section 45-23-21(b) shall, within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the board. If such report shows that a boiler or pressure vessel is found to comply with the rules and regulations of the board, the owner or user thereof shall pay directly to the board the fee of Twenty Dollars ($20.00) for an annual certificate or Thirty Dollars ($30.00) for a biennial certificate, and the chief inspector or his duly authorized representative shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

Such inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers and high pressure, high temperature water boilers, and for not more than twenty-six (26) months in the case of heating boilers and pressure vessels.

In the case of those boilers and pressure vessels covered by Section 45-23-33(a), (b), (c) and (d) for which the board has established or extended the operating period between required inspections, pursuant to the provisions of Section 45-23-33(g) or (h), the certificate shall be valid for a period not more than two (2) months beyond the period set by the board.

Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within the building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected, or in any place where it will be accessible to interested parties.

Air tanks used to inflate automobile tires shall be exempt from the inspection requirements of this section.

**HISTORY: Laws, 1974, ch. 500, § 16(1); Laws, 1978, ch. 380, § 1; Laws, 1992, ch. 534, § 2; Laws, 1993, ch. 323, § 2; Laws, 2008, ch. 316, § 1; Laws, 2016, ch. 510, § 39, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 38, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the last sentence of the first paragraph.

The 2020 amendment reenacted the section without change.

## § 45-23-45. Statement by company covered by owner or user inspection service; filing fee.

Each such company shall, in addition, file annually with the board a statement, signed by the engineer having supervision over the inspections made during the period covered thereby, stating the number of vessels covered by this chapter inspected during the year and certifying that each such inspection was conducted pursuant to the inspection requirements provided for by this chapter. Such annual statement shall be accompanied by a filing fee in accordance with the following schedule:

(a) For statements covering not more than twenty-five (25) vessels – Three Dollars ($3.00) per vessel.

(b) For statements covering more than twenty-five (25) but less than one hundred one (101) vessels – Seventy-five Dollars ($75.00).

(c) For statements covering more than one hundred (100) but less than five hundred one (501) vessels – One Hundred Fifty Dollars ($150.00).

(d) For statements covering more than five hundred (500) vessels – Three Hundred Dollars ($300.00).

Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

**HISTORY: Laws, 1974, ch. 500, § 16(3); Laws, 2016, ch. 510, § 40, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 39, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the last paragraph of the section.

The 2020 amendment reenacted the section without change.

## § 45-23-53. Fees where inspection made by chief inspector or his deputy.

The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, of his deputy inspector, shall pay directly to the board, upon completion of inspection, fees as specified by the board in the rules and regulations.

(a) Fee schedules set by the board shall be reasonable and practical, but shall be set at a level which, in conjunction with the fees collected under Sections 45-23-41 through 45-23-45, will make this activity reasonably self-supporting. Any increase in the fees set by the board under this paragraph shall be in accordance with the provisions of Section 41-3-65.

(b) A group of pressure vessels, such as the rolls of a paper machine or dryer operating as a single machine or unit, shall be considered as one (1) pressure vessel.

(c) Not more than one (1) fee shall be charged or collected for any and all inspections of any pressure vessel in any required inspection period.

(d) When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees applicable to a certificate inspection of the boiler or pressure vessel shall be charged.

**HISTORY: Laws, 1974, ch. 500, § 18(1); Laws, 2016, ch. 510, § 41, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 41 eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the last sentence of (a); and made a minor stylistic change.

The 2020 amendment reenacted the section without change.

# CHAPTER 27.

# MISSISSIPPI JUSTICE INFORMATION CENTER

Sec.

45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; random review of certain agencies' or clerks' records by PEER committee; new or upgraded computerized records management systems to be formatted to Department of Justice approved format; implementation of incident-based reporting system within law enforcement agencies.

## § 45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; random review of certain agencies' or clerks' records by PEER committee; new or upgraded computerized records management systems to be formatted to Department of Justice approved format; implementation of incident-based reporting system within law enforcement agencies.

(1) All criminal justice agencies within the state shall submit to the center an arrest card that will transmit fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this state for all felonies and misdemeanors as described in Section 45-27-7(2)(a). It shall be the duty of all chiefs of police, sheriffs, district attorneys, courts, court clerks, judges, parole and probation officers, wardens or other persons in charge of correctional institutions in this state to furnish the center with all data required by the rules duly promulgated under the Administrative Procedures Act to carry out its responsibilities under this chapter, and the duty of courts and court clerks to submit a disposition form for every disposition. It shall be the duty of all criminal justice agencies within the state to supply the prosecutor and the proper court with the disposition form that is attached to the physical arrest card if fingerprints were taken manually or, if fingerprints were captured digitally, the disposition form generated by the electronic fingerprint device at the time of the arrest. The PEER committee may conduct random review of the records of any agency or clerks referenced in this subsection (1) to determine whether the duties of such agencies and clerks are being fulfilled in a timely manner. The PEER committee, based on its findings, if any, shall recommend measures to ensure that the duties are more effectively carried out in a timely manner.

(2) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, fingerprints according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation, full face and profile photographs (if equipment is available) and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection (1) of this section, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file. Any record taken in connection with any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall be purged from the files of the center and destroyed upon receipt by the center of a lawful expunction order. All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrests or takings into custody which result in release without

charge or subsequent exoneration from criminal liability within twenty-four (24) hours of the release or exoneration.

(3) Fingerprints and other identifying data required to be taken under subsection (2) shall be forwarded within twenty-four (24) hours after taking for filing and classification, but the period of twenty-four (24) hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo Available" and the photographs shall be forwarded subsequently if the center so requests.

(4) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year and at other times if requested by the center, confirm all arrest warrants which continue to be outstanding. Upon receipt of a lawful expunction order, the center shall purge and destroy files of all data relating to an offense when an individual is subsequently exonerated from criminal liability of that offense. The center shall not be liable for the failure to purge, destroy or expunge any records if an agency or court fails to forward to the center proper documentation ordering the action.

(5) All persons in charge of state correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation or as otherwise directed by the center, and full face and profile photographs of all persons received on commitment to the institutions. The prints so taken shall be forwarded to the center, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints, as before, and forward them to the center within ten (10) days, along with any other related information requested by the center. The institution shall notify the center immediately upon the release of the person.

(6) All persons in charge of law enforcement agencies, all court clerks, all municipal justices where they have no clerks, all justice court judges and all persons in charge of state and county probation and parole offices, shall supply the center with the information described in subsections (4) and (10) of this section on the basis of the forms and instructions for the disposition form to be supplied by the center.

(7) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and correctional institutions in this state having criminal identification files shall cooperate in providing the center with copies of the items in the files which will aid in establishing the nucleus of the state criminal identification file.

(8) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all

vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed a crime. The report shall be made within a reasonable time period following the reporting department's or agency's determination that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(9) All law enforcement agencies in the state shall immediately notify the center if at any time after making a report as required by subsection (8) of this section it is determined by the reporting department or agency that a person is no longer wanted or that a vehicle or property stolen has been recovered. Furthermore, if the agency making the apprehension or recovery is not the one which made the original report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery using methods prescribed by the center.

(10) All law enforcement agencies in the state and clerks of the various courts shall promptly report to the center all instances where records of convictions of criminals are ordered expunged by courts of this state as now provided by law. The center shall promptly expunge from the files of the center and destroy all records pertaining to any convictions that are ordered expunged by the courts of this state as provided by law.

(11) The center shall not be held liable for the failure to purge, destroy or expunge records if an agency or court fails to forward to the center proper documentation ordering the action.

(12) Any criminal justice department or agency making an expenditure in excess of Five Thousand Dollars ($5,000.00) in any calendar year on software or programming upgrades concerning a computerized records management system or jail management system shall ensure that the new or upgraded system is formatted to Department of Justice approved XML format and that no impediments to data sharing with other agencies or departments exist in the software programming.

(13)(a) All law enforcement agencies within the state shall:

(i) Implement an incident-based reporting system within the agency or department that meets the reporting requirements of the National Incident-Based Reporting System (NIBRS) of the Uniform Crime Reporting Program of the Federal Bureau of Investigation;

(ii) Use the system described by subparagraph (i) to submit to the center information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency, in a manner prescribed by the center; and

(iii) Report the information as soon as is practicable after the investigating agency or department ascertains that a qualifying crime has been committed in its jurisdiction, once the state-level NIBRS Repository is available.

(b) No later than July 1, 2019, the department shall submit a report to

the Legislature that identifies the number of local law enforcement agencies that have implemented the system described in this subsection (13).

**HISTORY: Laws, 1980, ch. 555, § 5; reenacted, Laws, 1983, ch. 381, § 5; Laws, 2001, ch. 500, § 17; Laws, 2007, ch. 436, § 3; Laws, 2014, ch. 403, § 2, eff from and after July 1, 2014; Laws, 2018, ch. 442, § 1, eff from and after July 1, 2018.**

**Amendment Notes —** The 2018 amendment added the last two sentences of (1); and added (13).

## § 45-27-21. Database of all expunction and nonadjudication orders created; accessibility to database.

### JUDICIAL DECISIONS

**1. In general.**

It was not error to permit the amendment of defendant's indictment two days before trial to allege defendant's habitual offender status because (1) the motion provided details of defendant's two prior felony convictions and sentences, so defendant was not unfairly surprised, (2) nothing supported defendant's claim that one of the convictions had been expunged, and, (3) had the conviction been expunged, the conviction could still be used to find defendant's habitual offender status. Rushing v. State, 195 So. 3d 760, 2016 Miss. LEXIS 279 (Miss. 2016).

# CHAPTER 33.

# REGISTRATION OF SEX OFFENDERS

Sec.


45-33-23. Definitions.

45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

45-33-27. Time frame and place for registration of offenders.

45-33-29. Address change notification; change in enrollment, employment or vocation status at any educational institution; change of employment or name; change of vehicle information; change of e-mail address or other designation used in Internet communications.

45-33-31. Reregistration.

45-33-32. Disclosure by sex offenders volunteering for organizations serving minors under the age of 18.

45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.

45-33-35. Central registry of offenders; duties of agencies to provide information.

45-33-59. Sex offenders employed in positions with direct, private and unsupervised contact with minors under the age of 18 required to notify employers in writing of sex offender status; notification to parents or guardians; applicability of section.

45-33-63. Carly's Law; certain future contact by registered sex offender with victim of the registerable offense prohibited; exception; penalties.

## § 45-33-21. Legislative findings and declaration of purpose.

### JUDICIAL DECISIONS

**1. In general.**

Because a juvenile's adjudication of delinquency for the strict-liability crime of sexual battery against a victim under the age of fourteen involved the use of force, the juvenile had to register as a sex offender. The requirement to register as a sex offender did not punish the juvenile, but protected the public from repeat offenses. L.B.C. v. Forrest Cty. Youth Court, — So. 3d —, 2017 Miss. LEXIS 443 (Miss. Nov. 30, 2017).

## § 45-33-23. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Conviction" means that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld. "Conviction of similar offenses" includes, but is not limited to, a conviction by a federal or military tribunal, including a court-martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian Reservation or other federal property, a conviction in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) Public Law 109-248.

(b) "Department" means the Mississippi Department of Public Safety unless otherwise specified.

(c) "Jurisdiction" means any court or locality including any state court, federal court, military court, Indian tribunal or foreign court, the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and Indian tribes that elect to function as registration jurisdictions under Title 1, SORNA Section 127 of the Adam Walsh Child Safety Act.

(d) "Permanent residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(e) "Registration" means providing information to the appropriate agency within the timeframe specified as required by this chapter.

(f) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the Mississippi Forensics Laboratory pursuant to Section 45-33-37; the photograph, fingerprints and other registration information are to be forwarded to the Department of Public Safety immediately.

(g) "Responsible agency" is defined as the person or government entity

whose duty it is to obtain information from a criminal sex offender upon conviction and to transmit that information to the Mississippi Department of Public Safety.

(i) For a criminal sex offender being released from the custody of the Department of Corrections, the responsible agency is the Department of Corrections.

(ii) For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county.

(iii) For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality.

(iv) For a sex offender in the custody of the youth court, the responsible agency is the youth court.

(v) For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court.

(vi) For an offender who has been committed to a mental institution following an acquittal by reason of insanity, the responsible agency is the facility from which the offender is released. Specifically, the director of the facility shall notify the Department of Public Safety before the offender's release.

(vii) For a criminal sex offender who is being released from a jurisdiction outside this state or who has a prior conviction in another jurisdiction and who is to reside, work or attend school in this state, the responsible agency is both the sheriff of the proposed county of residence and the department.

(h) "Sex offense" or "registrable offense" means any of the following offenses:

(i) Section 97-3-53 relating to kidnapping, if the victim was below the age of eighteen (18);

(ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(iii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;

(viii) Section 97-5-33 relating to the exploitation of children;

(ix) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(x) Section 97-29-3 relating to sexual intercourse between teacher and student;

(xi) Section 97-29-59 relating to unnatural intercourse;

(xii) Section 43-47-18 relating to sexual abuse of a vulnerable person;

(xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c);

(xiv) Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;

(xv) Section 97-29-63 relating to filming another without permission where there is an expectation of privacy;

(xvi) Section 97-29-45(1)(a) relating to obscene electronic communication;

(xvii) Section 97-3-104 relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners;

(xviii) Section 97-5-39(1)(e) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;

(xix) Section 97-29-51 relating to procuring or promoting prostitution when the victim is a child under eighteen (18) years of age;

(xx) Section 97-1-7 relating to attempt to commit any of the offenses referenced in this paragraph (h);

(xxi) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;

(xxii) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;

(xxiii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;

(xxiv) Capital murder when one (1) of the above-described offenses is the underlying crime.

(i) "Temporary residence" is defined as any place where the person abides, lodges, or resides for a period of seven (7) or more consecutive days which is not the person's permanent residence.

(j) "Address" means the actual physical street address of a person's permanent or temporary residence. For a person who is homeless but is subject to registration under this chapter, the address information must provide a specific description of where the person habitually lives; the term "homeless" or similar description does not constitute an address within the contemplation of this chapter.

**HISTORY: Laws, 2000, ch. 499, § 2; Laws, 2001, ch. 500, § 1; Laws, 2006, ch. 328, § 3; Laws, 2006, ch. 563, § 1; Laws, 2006, ch. 583, § 7; Laws, 2007, ch. 392, § 1; Laws, 2009, ch. 411, § 1; Laws, 2011, ch. 359, § 1; Laws, 2012, ch. 557, § 3;**

**Laws, 2013, ch. 521, § 1; Laws, 2015, ch. 452, § 9; Laws, 2016, ch. 362, § 2, eff from and after passage (approved Apr. 6, 2016); Laws, 2019, ch. 405, § 3, eff from and after July 1, 2019.**

**Amendment Notes —** The 2016 amendment, in (h), added (xix) and redesignated the remaining subparagraphs accordingly, and in (xx), substituted "commit any of the offenses referenced in this paragraph (h)" for "commit any of the above-referenced offenses."

The 2019 amendment added (j).

## JUDICIAL DECISIONS

### ANALYSIS

1. Registrable offense.
3. Sex offense.

**1. Registrable offense.**

Trial court erred by dispensing with defendant's registration requirement after defendant was convicted of engaging in sexual activity with a probationer because all convictions under Miss. Code Ann. § 97-3-104 resulted in a requirement to register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Although Miss. Code Ann. § 45-33-23(h)(xvii) does not specifically include the term "probationer," it encompasses the entirety of convictions under Miss. Code Ann. § 97-3-104 as registrable offenses; the subsections under § 45-33-23(h) do not cite the exact language of the statutes that require registration as a sex offender but instead give a general description of the statutory section. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Trial court erred by dispensing with defendant's registration as a sex offender after defendant was convicted of engaging in sexual activity with a probationer because public policy supported the conclusion that defendant committed a registrable offense; public policy supports the conclusion that Miss. Code Ann. § 45-33-23(h)(xvii) encompasses offenses involving probationers because a law enforcement officer is in a unique position of power over a probationer. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Miss. Code Ann. § 45-33-23(h)(xvii) requires registration for all convictions under Miss. Code Ann. § 97-3-104; while § 45-33-23(h)(xvii) does not specifically list as a registrable-offense sexual relations involving an offender on intensive supervision, a law enforcement officer who engages in sexual relations with an offender on intensive-supervision parole also must register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Language in Miss. Code Ann. § 45-33-23(h)(xvii) is sufficient to cover convictions under Miss. Code Ann. § 97-3-104 as a whole; because the subsections under § 45-33-23(h) list brief descriptions of the statutes that require sex-offender registration and do not track the full language of the statutes, § 45-33-23(h)(xvii) includes all convictions under § 97-3-104 as registrable sex offenses. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Statute and the federal statutes are not in "conflict" such that the statute violated defendant's constitutional rights; rather, the Legislature decided to expand the definitions found in the federal statutes to include, as a sex offense subject to classification and registration, the crime of kidnapping a minor under the age of sixteen, and the Legislature's expansion of the sex-offender registration laws is permissible. Thomas v. Miss. Dep't of Corr., 248 So. 3d 786, 2018 Miss. LEXIS 129 (Miss. 2018).

**3. Sex offense.**

Mississippi Department of Corrections requiring defendant to serve his full, fifteen-year sentence, consistent with the statute, imposed by the circuit court, was not an extension or increase in defendant's sentence because the denial of any

reduction to his sentence was not equivalent to the Department "resentencing" him. Thomas v. Miss. Dep't of Corr., 248 So. 3d 786, 2018 Miss. LEXIS 129 (Miss. 2018).

Circuit court did not err in affirming the denial of defendant's claim that he was being improperly classified as a sex offender and was entitled to trusty time or meritorious earned time because defendant's conviction for kidnapping a minor under the age of sixteen made him ineligible for parole and ineligible for any reduction in his sentence. Thomas v. Miss. Dep't of Corr., 248 So. 3d 786, 2018 Miss. LEXIS 129 (Miss. 2018).

Sexual battery against a victim under the age of fourteen is within the definition of sex offenses. L.B.C. v. Forrest Cty. Youth Court, — So. 3d —, 2017 Miss. LEXIS 443 (Miss. Nov. 30, 2017).

Interstate removal of a child is not a sex offense and carries no mandatory sentence. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

## § 45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

(1)(a) Any person having a permanent or temporary residence in this state or who is employed or attending school in this state who has been convicted of a registrable offense in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction shall register with the responsible agency and the Mississippi Department of Public Safety. Registration shall not be required for an offense that is not a registrable sex offense or for an offender who is under fourteen (14) years of age. The department shall provide the initial registration information as well as every change of name, change of address, change of status at a school, or other change of information as required by the department to the sheriff of the county of the residence address of the registrant, the sheriff of the county of the employment address, and the sheriff of the county of the school address, if applicable, and any other jurisdiction of the registrant through either written notice, electronic or telephone transmissions, or online access to registration information. Further, the department shall provide this information to the Federal Bureau of Investigation. Additionally, upon notification by the registrant that he intends to reside outside the State of Mississippi, the department shall notify the appropriate state law enforcement agency of any state to which a registrant is moving or has moved.

(b) Any person having a permanent or temporary residence or who is employed or attending school in this state who has been adjudicated delinquent for a registrable sex offense listed in this paragraph that involved use of force against the victim shall register as a sex offender with the responsible agency and shall personally appear at a facility designated by

the Mississippi Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days of registering with the responsible agency:

(i) Section 97-3-71 relating to rape and assault with intent to ravish;

(ii) Section 97-3-95 relating to sexual battery;

(iii) Section 97-3-65 relating to statutory rape; or

(iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.

(2) Any person required to register under this chapter shall submit the following information at the time of registration:

(a) Name, including a former name which has been legally changed;

(b) Street address of all current permanent and temporary residences within state or out of state at which the sex offender resides or habitually lives, including dates of temporary lodgings. There is a presumption that a registrant owes a duty of updating registration information if:

(i) The registrant remains away from a registered address for seven (7) or more consecutive days; or

(ii) If the registrant remains at another address between the hours of 10:00 p.m. and 6:00 a.m. for more than seven (7) consecutive days;

(c) Date, place and address of employment, including as a volunteer or unpaid intern or as a transient or day laborer;

(d) Crime for which charged, arrested or convicted;

(e) Date and place of conviction, adjudication or acquittal by reason of insanity;

(f) Aliases used or nicknames, ethnic or tribal names by which commonly known;

(g) Social security number and any purported social security number or numbers;

(h) Date and place of birth and any purported date and place of birth;

(i) Age, race, sex, height, weight, hair and eye colors, and any other physical description or identifying factors;

(j) A brief description of the offense or offenses for which the registration is required;

(k) Driver's license or state or other jurisdiction identification card number, which license or card may be electronically accessed by the Department of Public Safety;

(*l*) Anticipated future residence;

(m) If the registrant's residence is a motor vehicle, trailer, mobile home or manufactured home, the registrant shall also provide vehicle identification number, license tag number, registration number and a description, including color scheme, of the motor vehicle, trailer, mobile home or manufactured home; if the registrant's place of residence is a vessel or houseboat, the registrant shall also provide the hull identification number, manufacturer's serial number, name of the vessel or houseboat, registration number and a description, including color scheme, of the vessel or houseboat, including permanent or frequent locations where the motor vehicle, trailer, mobile home, manufactured home, vessel or houseboat is kept;

(n) Vehicle make, model, color and license tag number for all vehicles owned or operated by the sex offender, whether for work or personal use, and the permanent or frequent locations where a vehicle is kept;

(o) Offense history;

(p) Photograph;

(q) Fingerprints and palm prints;

(r) Documentation of any treatment received for any mental abnormality or personality disorder of the person;

(s) Biological sample;

(t) Name of any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education at which the offender is employed, carries on a vocation (with or without compensation) or is enrolled as a student, or will be enrolled as a student, and the registrant's status;

(u) Copy of conviction or sentencing order for the sex offense for which registration is required;

(v) The offender's parole, probation or supervised release status and the existence of any outstanding arrest warrants;

(w) Every online identity, screen name or username used, registered or created by a registrant;

(x) Professional licensing information which authorizes the registrant to engage in an occupation or carry out a trade or occupation;

(y) Information from passport and immigration documents;

(z) All telephone numbers, including, but not limited to, permanent residence, temporary residence, cell phone and employment phone numbers, whether landlines or cell phones; and

(aa) Any other information deemed necessary.

(3) For purposes of this chapter, a person is considered to be residing in this state if he maintains a permanent or temporary residence as defined in Section 45-33-23, including students, temporary employees and military personnel on assignment.

(4)(a) A person required to register under this chapter shall not reside within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school, a child care facility, a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(b) A person residing within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this subsection if any of the following apply:

(i) The person is serving a sentence at a jail, prison, juvenile facility or other correctional institution or facility.

(ii) The person is subject to an order of commitment under Title 41, Mississippi Code of 1972.

(iii) The person established the subject residence before July 1, 2006.

(iv) The school or child care facility is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(v) The person established the subject residence between July 1, 2006, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the school or child care facility.

(vi) The person is a minor or a ward under a guardianship.

(c) A person residing within three thousand (3,000) feet of the real property comprising a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years does not commit a violation of this subsection if any of the following apply:

(i) The person established the subject residence before July 1, 2008.

(ii) The residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(iii) The person established the subject residence between July 1, 2008, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(iv) Any of the conditions described in subsection (4)(b)(i), (ii) or (vi) exist.

(5) The Department of Public Safety is required to obtain the text of the law defining the offense or offenses for which the registration is required.

**HISTORY: Laws, 2000, ch. 499, § 3; Laws, 2001, ch. 500, § 2; Laws, 2006, ch. 566, § 2; Laws, 2007, ch. 392, § 2; Laws, 2008, ch. 424, § 1; Laws, 2011, ch. 359, § 2; Laws, 2013, ch. 521, § 2, eff from and after Jan. 1, 2014; Laws, 2020, ch. 477, § 10, eff from and after passage (approved July 8, 2020).**

**Amendment Notes —** The 2020 amendment, effective July 8, 2020, in (1)(b), substituted "a facility designated by the Mississippi Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days" for "a Mississippi Department of Public Safety Driver's License Station within three (3) business days."

## JUDICIAL DECISIONS

**3. Registrable offenses.**

Because a juvenile's adjudication of delinquency for the strict-liability crime of sexual battery against a victim under the age of fourteen involved the use of force, the juvenile had to register as a sex offender. Force was presumed as a child could not consent to sexual battery by operation of law. L.B.C. v. Forrest Cty. Youth Court, — So. 3d —, 2017 Miss. LEXIS 443 (Miss. Nov. 30, 2017).

In a case in which defendant was convicted for failure to register as a sex offender, the trial court was right to exclude a police report as hearsay but still allow a detective's testimony about the address

defendant gave him. Durr v. State, 186 So. 3d 903, 2015 Miss. App. LEXIS 468 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

**ALR.**

Validity, Construction, and Application of State Sex Offender Statutes Prohibiting Use of Computers and Internet as Conditions of Probation or Sentence. 89 A.L.R.6th 261.

## § 45-33-26. Prohibition against sex offender being present in or within a certain distance of school building or school property or in or about any public beach or public campground where minor children congregate; exemptions; penalties.

RESEARCH REFERENCES

**ALR.**

Validity, Construction, and Application of State Sex Offender Statutes Prohibiting Use of Computers and Internet as Conditions of Probation or Sentence. 89 A.L.R.6th 261.

## § 45-33-27. Time frame and place for registration of offenders.

(1) A person required to register on the basis of a conviction, adjudication of delinquency or acquittal by reason of insanity entered shall register with the responsible agency within three (3) business days of the date of judgment unless the person is immediately confined or committed, in which case the person shall register before release in accordance with the procedures established by the department. The responsible agency shall immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days of registration with the responsible agency and to obtain a sex offender registration card.

(2) If a person who is required to register under this section is released from prison or placed on parole or supervised release or in a restitution center or community work center, the Department of Corrections shall perform the registration duties before placement in a center or before release and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days of release or placement in a restitution center or community work center.

(3) If a person required to register under this section is placed on probation, the court, at the time of entering the order, shall register the person and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a facility

designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days of the entry of the order.

(4) Any person required to register who is neither incarcerated, detained nor committed at the time the requirement to register attaches shall present himself to the county sheriff to register within three (3) business days, and shall personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days of the time the requirement to register attaches.

(5) An offender moving to or returning to this state from another jurisdiction shall notify the Department of Public Safety ten (10) days before the person first resides in or returns to this state and shall present himself to the sheriff of the county of his residence within three (3) business days after first residing in or returning to a county of this state to provide the required registration information. The person is also required to register by personally appearing at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days after first residing in or moving to a county of this state. If the offender fails to appear for registration as required in this state, the department shall notify the other jurisdiction of the failure to register.

(6) A person, other than a person confined in a correctional or juvenile detention facility or involuntarily committed on the basis of mental illness, who is required to register on the basis of a sex offense for which a conviction, adjudication of delinquency or acquittal by reason of insanity was entered shall register with the sheriff of the county in which he resides no later than August 15, 2000, or within three (3) business days of first residing in or returning to a county of this state.

(7) Every person required to register shall show proof of domicile. The commissioner shall promulgate any rules and regulations necessary to enforce this requirement and shall prescribe the means by which such person may show domicile.

(8) Any driver's license photograph, I.D. photograph, sex offender photograph, fingerprint, driver's license application and/or anything submitted to the Department of Public Safety by a known convicted sex offender, registered or not registered, can be used by the Department of Public Safety or any other authorized law enforcement agency for any means necessary in registration, identification, investigation regarding their tracking or identification.

(9) The department will assist local law enforcement agencies in the effort to conduct address and other verifications of registered sex offenders and will assist in the location and apprehension of noncompliant sex offenders.

**HISTORY: Laws, 2000, ch. 499, § 4; Laws, 2001, ch. 500, § 3; Laws, 2005, ch. 353, § 1; Laws, 2006, ch. 563, § 2; Laws, 2007, ch. 392, § 3; Laws, 2011, ch. 359, § 3, eff from and after July 1, 2011; Laws, 2020, ch. 477, § 11, eff from and after passage (approved July 8, 2020).**

**Amendment Notes —** The 2020 amendment, effective July 8, 2020, in (1) through

(5), substituted "a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) days" for "a Department of Public Safety Driver's License Station within three (3) days."

## § 45-33-29. Address change notification; change in enrollment, employment or vocation status at any educational institution; change of employment or name; change of vehicle information; change of e-mail address or other designation used in Internet communications.

(1) Upon any change of address, including temporary lodging, an offender required to register under this chapter is required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, not less than ten (10) days before he intends to first reside at the new address.

(2) Upon any change in the status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education, the offender is required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days of the change.

(3) Upon any change of employment or change of name, a registrant is required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days of the change.

(4) Upon any change of vehicle information, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(5) Upon any change of e-mail address or addresses, instant message address or addresses, or any other designation used in Internet communications, postings or telephone communications, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(6) Upon any change of information deemed by the department to be necessary to the state's policy to assist local law enforcement agencies' efforts to protect their communities, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

**HISTORY: Laws, 2000, ch. 499, § 5; Laws, 2001, ch. 500, § 4; Laws, 2005, ch. 353, § 2; Laws, 2006, ch. 563, § 3; Laws, 2007, ch. 392, § 4; Laws, 2011, ch. 359, § 5, eff from and after July 1, 2011; Laws, 2020, ch. 477, § 12, eff from and after passage (approved July 8, 2020).**

**Amendment Notes** — The 2020 amendment, effective July 8, 2020, in (1) through (3), substituted "a facility designated by the Department of Public Safety, or in a

manner of the Department of Public Safety's choosing, including by electronic means" for "Department of Public Safety Driver's License Station."

JUDICIAL DECISIONS

**1. Evidence.**

Trial court did not err in excluding a witness's testimony regarding defendant's ability to read and write because defendant's ex-girlfriend testified that she had witnessed defendant read and write, and the witness also testified that defendant possessed awareness that the sex-offender statute required him to notify the Department of Public Safety of a change of address; the records clerk reviewed and explained the sex-offender registration paperwork with defendant and read the forms to him. Caves v. State, 179 So. 3d 1175, 2015 Miss. App. LEXIS 312 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 635 (Miss. 2015).

## § 45-33-31. Reregistration.

(1)(a) Registrants who are in compliance with a program of electronic monitoring under this chapter are required to reregister annually.

(b) All other registrants are required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, to register every ninety (90) days.

(2) Reregistration includes the submission of current information and photograph to the department and the verification of registration information, including the street address and telephone number of the registrant; name, street address and telephone number of the registrant's employment or status at a school, along with any other registration information that may need to be verified and the payment of any required fees.

(3) A person who fails to reregister and obtain a renewal sex offender registration card as required by this section commits a violation of this chapter. The Department of Public Safety will immediately notify any sheriff or other jurisdiction of any changes in information including residence address, employment and status at a school if that jurisdiction, county or municipality is affected by the change.

**HISTORY: Laws, 2000, ch. 499, § 6; Laws, 2001, ch. 500, § 5; Laws, 2005, ch. 353, § 3; Laws, 2006, ch. 563, § 4; Laws, 2007, ch. 392, § 5; Laws, 2011, ch. 359, § 6; Laws, 2013, ch. 521, § 5, eff from and after Jan. 1, 2014; Laws, 2020, ch. 477, § 13, eff from and after passage (approved July 8, 2020).**

**Amendment Notes** — The 2020 amendment, effective July 8, 2020, in (1)(b), substituted "a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, to reregister" for "a Department of Public Safety Driver's License Station to reregister."

## § 45-33-32. Disclosure by sex offenders volunteering for organizations serving minors under the age of 18.

(1) A person convicted of a sex offense who volunteers for an organization in which volunteers have direct, private and unsupervised contact with minors

under the age of eighteen (18) shall notify the organization of the person's conviction at the time of volunteering. Such notification must be in writing to the organization. Any organization which accepts volunteers must notify volunteers of this disclosure requirement upon application of the volunteer to serve or prior to acceptance of any of the volunteer's service, whichever occurs first.

(2) If the organization, after notification by the offender as provided in subsection (1), accepts the offender as a volunteer, the organization shall make reasonable attempts to notify the parents or guardians of any minors under the age of eighteen (18) involved in the organization of the offender's criminal record.

(3) This section applies to all registered sex offenders regardless of the date of conviction.

(4) Any person previously registered as a sex offender and who has a continuing obligation to be registered as a sex offender shall be notified of the person's duty under this section with the first reregistration form to be sent to the person after July 1, 2004.

(5) If the registered sex offender is currently volunteering for such an organization, the sex offender must resign or notify the organization immediately upon receipt of notice or be subject to the penalties of this chapter.

(6) An organization acting in good faith in making the notification to parents or guardians under this section, or who fails in good faith to make such notification, shall not be liable in any civil or criminal action as a result of the notification or failure to notify.

**HISTORY: Laws, 2004, ch. 493, § 1, eff from and after July 1, 2004; Laws, 2019, ch. 405, § 2, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment inserted "under the age of eighteen (18)" in (1); in (2), substituted "shall make reasonable attempts to notify" for "must notify," and inserted "under the age of eighteen (18)"; and added (6).

## § 45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.

(1)(a) The failure of an offender to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, or to provide any registration or other information, including, but not limited to, initial registration, reregistration, change of address information, change of employment, change of name, required notification to a volunteer organization or any other registration duty or submission of information required by this chapter is a violation of this chapter. Additionally, forgery of information or submission of information under false pretenses, whether by the registrant or another person, is also a violation of this chapter.

(b) A person commits a violation of this chapter who:

(i) Knowingly harbors, or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this chapter;

(ii) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or

(iii) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

(c) A registrant who is required to submit to electronic monitoring who does not comply with all the terms and conditions of the electronic monitoring commits a violation of this chapter.

(2)(a) Unless otherwise specified, a violation of this chapter shall be considered a felony and shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00), imprisonment in the custody of the Department of Corrections for not more than five (5) years, or both fine and imprisonment.

(b) A person who is required to register under this chapter who is subsequently convicted for a registration violation under this section, upon release from incarceration, shall submit to mandatory electronic monitoring under the program established under Section 45-33-45 for a period computed by subtracting the time the person spent in actual incarceration from the five-year maximum imprisonment for the offense and the period of post-release monitoring shall not be suspended or reduced by the court or the Department of Corrections.

(3) Whenever it appears that an offender has failed to comply with the duty to register, reregister or submit to electronic monitoring, the department shall promptly notify the sheriff of the county of the last-known address of the offender as well as the sheriff of the county of the last-known location of the offender, if different. Upon notification, the sheriff shall attempt to locate the offender at his last-known address or last-known location.

(a) If the sheriff locates the offender, he shall enforce the provisions of this chapter, including initiation of prosecution if appropriate. The sheriff shall then notify the department with the current information regarding the offender.

(b) If the sheriff is unable to locate the offender, the sheriff shall promptly notify the department and initiate a criminal prosecution against the offender for the failure to register, reregister or comply with electronic monitoring. The sheriff shall make the appropriate transactions into the Federal Bureau of Investigation's wanted-person database and issue a warrant for the offender's arrest. The department shall notify the United States Marshals Service of the offender's noncompliant status and shall update the registry database and website to show the defendant's noncompliant status as an absconder.

(4) A violation of this chapter shall result in the arrest of the offender.

(5) Any prosecution for a violation of this section shall be brought by a prosecutor in the county of the violation.

(6) A person required to register under this chapter who commits any act or omission in violation of this chapter may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sex offender, the county in which the conviction occurred for the offense or offenses that meet the criteria requiring the person to register, the county in which he was designated a sex offender, or the county in which the sex offender was found.

(7) The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or driving privilege of any offender failing to comply with the duty to report, register or reregister, submit to monitoring, or who has provided false information.

(8) When a person required to register under this chapter is accused of any registration offense under this section, pretrial release on bond shall be conditioned on the offender's submission to electronic monitoring under the program established under Section 45-33-45.

**HISTORY: Laws, 2000, ch. 499, § 7; Laws, 2001, ch. 500, § 6; Laws, 2004, ch. 493, § 2; Laws, 2005, ch. 353, § 4; Laws, 2006, ch. 566, § 3; Laws, 2007, ch. 392, § 6; Laws, 2011, ch. 359, § 7; Laws, 2013, ch. 521, § 6, eff from and after Jan. 1, 2014; Laws, 2020, ch. 477, § 14, eff from and after passage (approved July 8, 2020).**

**Amendment Notes** — The 2020 amendment, effective July 8, 2020, in (1)(a), substituted "a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, or to provide" for "a Department of Public Safety Driver's License Station or to provide"; and deleted "or" at the end of (1)(b)(i).

**JUDICIAL DECISIONS**

**2. Substantial evidence.**

Substantial evidence supported the jury's verdict finding defendant guilty of failing to register as a sex offender because the sex-offender registration forms reflected defendant initialed the forms as acknowledging that he received them; defendant's girlfriend testified that defendant could indeed read and write and that she had previously accompanied the defendant when he re-registered as a sex offender, and the records clerk testified that she read the sex-offender registration forms to him. Caves v. State, 179 So. 3d 1175, 2015 Miss. App. LEXIS 312 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 635 (Miss. 2015).

## § 45-33-35. Central registry of offenders; duties of agencies to provide information.

(1) The Mississippi Department of Public Safety shall maintain a central registry of sex offender information as defined in Section 45-33-25 and shall adopt rules and regulations necessary to carry out this section. The responsible agencies shall provide the information required in Section 45-33-25 on a form developed by the department to ensure accurate information is maintained.

(2) Upon conviction, adjudication or acquittal by reason of insanity of any sex offender, if the sex offender is not immediately confined or not sentenced to

a term of imprisonment, the clerk of the court which convicted and sentenced the sex offender shall inform the person of the duty to register, including the duty to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the department.

(3) Before release from prison or placement on parole, supervised release or in a work center or restitution center, the Department of Corrections shall inform the person of the duty to register, including the duty to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(4) Before release from a community regional mental health center or from confinement in a mental institution following an acquittal by reason of insanity, the director of the facility shall inform the offender of the duty to register, including the duty to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(5) Before release from a youthful offender facility, the director of the facility shall inform the person of the duty to register, including the duty to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(6) In addition to performing the registration duties, the responsible agency shall:

(a) Inform the person having a duty to register that:

(i) The person is required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, at least ten (10) days before changing address.

(ii) Any change of address to another jurisdiction shall be reported to the department by personally appearing at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, not less than ten (10) days before the change of address. The offender shall comply with any registration requirement in the new jurisdiction.

(iii) The person must register in any jurisdiction where the person is employed, carries on a vocation, is stationed in the military or is a student.

(iv) Address verifications shall be made by personally appearing at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within the required time period.

(v) Notification or verification of a change in status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education shall be reported to the department by personally appearing at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days of the change.

(vi) If the person has been convicted of a sex offense, the person shall notify any organization for which the person volunteers in which volunteers have direct, private or unsupervised contact with minors that the person has been convicted of a sex offense as provided in Section 45-33-32(1).

(vii) Upon any change of name or employment, a registrant is required to personally appear at a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's choosing, including by electronic means, within three (3) business days of the change.

(viii) Upon any change of vehicle information, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(ix) Upon any change of e-mail address or addresses, instant message address or addresses or any other designation used in Internet communications, postings or telephone communications, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(x) Upon any change of information deemed to be necessary to the state's policy to assist local law enforcement agencies' efforts to protect their communities, a registrant is required to report the change on an appropriate form supplied by the department within three (3) business days of the change.

(b) Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained.

(c) Obtain or facilitate the obtaining of a biological sample from every registrant as required by this chapter if such biological sample has not already been provided to the Mississippi Forensics Laboratory.

(d) Provide a copy of the order of conviction or sentencing order to the department at the time of registration.

**HISTORY: Laws, 2000, ch. 499, § 8; Laws, 2001, ch. 500, § 7; Laws, 2004, ch. 493, § 3; Laws, 2005, ch. 353, § 5; Laws, 2006, ch. 563, § 6; Laws, 2007, ch. 392, § 8; Laws, 2011, ch. 359, § 8; Laws, 2015, ch. 452, § 10, eff from and after July 1, 2015; Laws, 2020, ch. 477, § 15, eff from and after passage (approved July 8, 2020).**

**Amendment Notes —** The 2020 amendment, effective July 8, 2020, in (2) through (5) and (6)(a)(i), (ii), (iv), (v), and (vii), substituted "a facility designated by the Department of Public Safety, or in a manner of the Department of Public Safety's

choosing, including by electronic means" for "a Department of Public Safety Driver's License Station."

## § 45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.

### JUDICIAL DECISIONS

**4. Lifetime registration.**

Circuit court properly denied defendant's petition for relief from the duty to register as a sex offender because the issues of the State's purported duty to notify and laches were procedurally barred from consideration inasmuch as defendant did not raise them in the circuit court, and, while sexual battery of a child under 12 years old was a "tier three" offense, defendant was subject to lifetime registration since he was at least 21 years old. Roberts v. State, 281 So. 3d 1066, 2019 Miss. App. LEXIS 239 (Miss. Ct. App. 2019).

## § 45-33-55. Exemptions for expunction.

### JUDICIAL DECISIONS

**1. Expungement of conviction.**

Given its plain language, Miss. Code Ann. § 45-33-55 exempts sex offenses from Mississippi laws allowing expungement and Mississippi orders granting expungement to the extent such information is authorized for dissemination under the Mississippi Sex Offenders Registration Law. Thus, despite appellant's expungement of her misdemeanor sex offense, appellant still had a duty to register under the Sex Offenders Registration Law. Ferguson v. Miss. Dep't of Pub. Safety, 278 So. 3d 1155, 2019 Miss. LEXIS 344 (Miss. 2019).

Miss. Code Ann. § 45-33-55's exemption for sex offenses from orders of expungement applies to orders of expungement granted under Mississippi law. To the extent that Stallworth v. State, 160 So. 3d 1161 (Miss. 2015), held otherwise, it is overruled. Ferguson v. Miss. Dep't of Pub. Safety, 278 So. 3d 1155, 2019 Miss. LEXIS 344 (Miss. 2019).

## § 45-33-59. Sex offenders employed in positions with direct, private and unsupervised contact with minors under the age of 18 required to notify employers in writing of sex offender status; notification to parents or guardians; applicability of section.

(1)(a) Any person convicted of a sex offense who is employed in any position, or who contracts with a person to provide personal services, where the employee or contractor will have direct, private and unsupervised contact with minors under the age of eighteen (18) shall notify in writing the employer or the person with whom the person has contracted or is employed of his sex offender status.

(b) The employer shall make a reasonable attempt to notify the parents

or guardians of any minors under the age of eighteen (18) with whom the employee or contractor will have direct, private and unsupervised contact of the offender's criminal record.

(2) This section applies to all registered sex offenders regardless of the date of conviction.

(3) An employer acting in good faith in making notification to parents or guardians under this section, or who fails in good faith to make notification, shall not be liable in any civil or criminal action as a result of the notification or failure to notify.

(4) This section does not authorize the employment of a person for a position for which employment of a sex offender is prohibited by any law.

(5) This section does not apply to an employer whose employees have only incidental contact with children because children may be present in the workplace without any formal agreement; casual or incidental contact does not trigger the duty to inform.

**HISTORY: Laws, 2006, ch. 566, § 7; Laws, 2007, ch. 392, § 13, eff from and after July 1, 2007; Laws, 2019, ch. 405, § 1, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment rewrote former (1), which read: "Any person convicted of a sex offense who is employed in any position, or who contracts with a person to provide personal services, where the employment position or personal services contract will bring the person into close regular contact with children shall notify in writing the employer or the person with whom the person has contracted of his sex offender status" and redesignated it (1)(a); added (1)(b); and added (3) through (5).

## § 45-33-63. Carly's Law; certain future contact by registered sex offender with victim of the registerable offense prohibited; exception; penalties.

(1) Except as otherwise provided in this section, it is unlawful for a person required to register as a sex offender under Section 45-33-25 to do or commit any of the following actions with respect to the victim of the offense triggering the duty to register under this chapter:

(a) Threaten, visit, assault, molest, abuse, injure, or otherwise interfere with the victim;

(b) Follow the victim, including at the victim's workplace;

(c) Harass the victim;

(d) Contact the victim by telephone, written communication, or electronic means;

(e) Enter or remain present at the victim's residence, school, or place of employment when the victim is present.

(2) This section does not apply if the court in which the conviction was had, at the request of the victim or the parent, guardian or conservator of the victim, enters an order allowing contact with the victim. The court may enter such an order if the court determines that reasonable grounds for the victim to fear any future contact with the defendant no longer exist.

(3) A violation of this section is a felony punishable by a fine of not more than Five Thousand Dollars ($5,000.00) and imprisonment in the custody of

the Department of Corrections for not less than five (5) nor more than ten (10) years.

(4) A law enforcement officer shall arrest and take into custody a person, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated this section.

(5) Nothing in this section shall be construed to affect the issuance or enforcement of a criminal sexual assault protection against a defendant who has been convicted under Section 97-3-65 or 97-3-95.

(6) This section shall be known as Carly's Law.

**HISTORY: Laws, 2020, ch. 446, § 1, eff from and after July 1, 2020.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

# CHAPTER 35.

# IDENTIFICATION CARDS

Article 1. General Provisions. ..... 45-35-1

## ARTICLE 1.

## GENERAL PROVISIONS.

Sec.
45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran; electronic format for identification card.

### § 45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran; electronic format for identification card.

(1) Any person six (6) years of age or older may be issued an identification card by the department which is certified by the registrant and attested by the commissioner as to true name, correct age and such other identifying data as required by Section 45-35-5.

(2) The new, renewal or duplicate identification card of a person required to register as a sex offender pursuant to Section 45-33-25 shall bear a designation identifying the cardholder as a sex offender.

(3) The commissioner is authorized to provide the new, renewal or duplicate identification card to any honorably discharged veteran as defined in Title 38 of the United States Code, and such identification card shall exhibit

the letters "Vet" or any other mark identifying the person as a veteran. The veteran requesting the "Vet" designation shall present his DD-214 or equivalent document that includes a notation from the State Veterans Affairs Board that the applicant is a veteran.

(4) Not later than July 1, 2021, the commissioner shall develop and implement an identification card in electronic format as an additional option for card holders. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of electronic device.

**HISTORY: Laws, 1988, ch. 570, § 2; Laws, 1996, ch. 322, § 2; Laws, 2001, ch. 343, § 1; Laws, 2007, ch. 392, § 15; Laws, 2012, ch. 561, § 3, eff from and after passage (approved May 23, 2012.); Laws, 2020, ch. 477, § 4, eff from and after passage (approved July 8, 2020).**

**Amendment Notes** — The 2020 amendment, effective July 8, 2020, added (4).

### § 45-35-7. Expiration; renewal; fees; records; registration with Selective Service.

**Editor's Notes** — The Military Selective Service Act, 50 USCS App. 451, referred to in this section, was renumbered 50 USCS § 3801 as part of the 2015 editorial reclassification of Title 50 and Title 50 Appendix.

**Federal Aspects**— Military Selective Service Act, see 50 USCS § 3801 et seq.

## ARTICLE 3.

## PERSONAL IDENTIFICATION CARDS FOR PERSONS WITH DISABILITIES.

### § 45-35-55. Issuance of cards to persons with permanent disabilities and renewal thereof; issuance of cards to persons with temporary disabilities and renewal thereof.

**Editor's Notes.** — Executive Order No. 1474, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provisions of Miss. Code Ann. §§ 63-1-47, 63-1-6, 63-1-21, 45-9-101, 97-37-7, and 45-35-55 are hereby suspended to the extent necessary to delay the expiration of all valid driver's licenses, learner's permits, intermediate licenses, firearm permits, security guard permits and ID cards set to expire between March 14-2020 and June 30, 2020. Such licenses, permits and ID cards will instead expire on August 3, 2020."

# CHAPTER 45.

# MISSISSIPPI CONVEYANCE SAFETY ACT

Sec.

45-45-27. Inspection and testing of conveyances.

## § 45-45-27. Inspection and testing of conveyances.

(1) It shall be the responsibility of the owner of all new and existing conveyances located in any building or structure to have the conveyance inspected annually (ASME A17.1/CSA B44, category one) by a licensed elevator inspector who shall supply the property owner or lessee and the licensing authority with a written inspection report that describes any and all code violations. However, if the conveyance is an elevator that serves only two (2) adjacent floors, the owner may request an exemption from the annual inspection requirement pursuant to rules and regulations promulgated by the commissioner governing said exemption. Property owners shall have thirty (30) days from the date of the published inspection report to be in full compliance with correcting the violations.

(2)(a) It shall be the responsibility of the owner of all conveyances to hire an elevator contractor or a limited elevator contractor to supervise the required tests at intervals in compliance with the ASME A17.1/CSA B44 Appendix N, ASME A18.1 and ASCE 21.

(b) All tests shall be performed by a licensed elevator mechanic.

**HISTORY: Laws, 2013, ch. 405, § 14, eff from and after July 1, 2013; Laws, 2020, ch. 447, § 3, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment, in (1), substituted "violations" for "violation" at the end of the first sentence, and added the second sentence.

# CHAPTER 47.

# DNA DATA BANK

Sec.

45-47-1. DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority.

## § 45-47-1. DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority.

(1) Every person who is arrested for the commission or attempted commission of a crime of violence as defined in Section 97-3-2 shall provide a biological sample for DNA testing to jail or detention center personnel upon booking. The analysis shall be performed by the Mississippi Forensics Lab or other entity designated by the Department of Public Safety, and the results shall be maintained by the Forensics Lab according to standard protocols adopted for maintenance of DNA records in conformity to federal guidelines for the maintenance of such records.

(2)(a) A DNA sample shall be collected by an individual who is trained in the collection procedures that the Forensics Laboratory uses.

(b) Upon motion of one (1) of the parties, or sua sponte by the court, the court may direct the Forensics Lab to destroy the sample and delete from the database all records thereof if there is no other pending qualifying warrant or capias for an arrest or felony conviction that would require that the sample remain in the DNA data bank if:

(i) The charge for which the sample was taken is dismissed;

(ii) The defendant is acquitted at trial or convicted of a lesser-included misdemeanor offense that is not an offense listed in this section;

(iii) No charge was filed within the statute of limitations, if any; or

(iv) No conviction has occurred, at least three (3) years have passed since the date of arrest, and there is no active prosecution.

(3)(a) Any person who, without authority, disseminates information contained in the DNA data bank shall be guilty of a misdemeanor.

(b) Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA data bank, knowing that the dissemination, receipt or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor.

(c) Except as authorized by law, any person who obtains or attempts to obtain any sample for purposes of having DNA analysis performed shall be guilty of a felony.

(4)(a) Any person convicted under subsection (3)(a) shall be sentenced to a fine not to exceed Five Hundred Dollars ($500.00) or confinement in the county jail not to exceed thirty (30) days, or both.

(b) Any person convicted under subsection (3)(b) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or confinement in the county jail not to exceed six (6) months, or both.

(c) Any person convicted under subsection (3)(c) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or commitment to the custody of the Department of Corrections not to exceed two (2) years, or both.

**HISTORY: Laws, 2014, ch. 502, § 1, effective from and after July 1, 2014; Laws, 2018, ch. 418, § 1, eff from and after passage (approved March 26, 2018).**

**Editor's Notes —** Chapter 418, Laws of 2018, is known as "Katie's Laws."

**Amendment Notes —** The 2018 amendment substituted references to "Forensics Lab" or "Forensics Laboratory" for references to "Crime Lab" or "Crime Laboratory" everywhere they appear in (1) and (2)(a); rewrote (2)(b), which read: "The clerk of the court shall notify the Crime Lab of the final disposition of criminal proceedings. The Crime Lab shall destroy the sample and delete from the database all records thereof if there is no other pending qualifying warrant or capias for an arrest or felony conviction that would require that the sample remain in the DNA data bank and"; and deleted (5) and (6), which read: "(5) A defendant may file a motion with the court to seek destruction of the DNA sample and deletion of such information from the record under this section. (6) This section shall not take effect unless the Legislature has provided sufficient funds for implementing the provisions of this section, including training, as certified by the Joint Legislative Budget Committee."

# CHAPTER 49.

# REQUIREMENTS FOR OPERATION OF AMUSEMENT RIDES

Sec.

45-49-1. Definitions [Effective January 1, 2021].
45-49-3. Annual operating permit decal required; application; display of decal [Effective January 1, 2021].
45-49-5. Annual inspection; qualifications of inspector; obligation of owner or operator to operate in compliance with certain standard and keep and make available copies of forms, certifications and safety inspections [Effective January 1, 2021].
45-49-7. Ride operator qualifications; denial of entrance to any person if operator believes entrance jeopardizes safety of person or others; patron responsibility [Effective January 1, 2021].
45-49-9. Incident report log; contents of log; report of all serious injuries or illnesses resulting from operation of ride; immediate cessation of operation and preservation of condition of ride upon event of serious injury or illness pending investigation [Effective January 1, 2021].
45-49-11. Investigation by Department of Revenue upon notification by owner or operator of serious injury or illness; department notification to owner or operator that investigation not warranted [Effective January 1, 2021].
45-49-13. Applicability of chapter [Effective January 1, 2021].
45-49-15. Adoption of rules and regulations to implement chapter [Effective January 1, 2021].

## § 45-49-1. Definitions [Effective January 1, 2021].

The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Amusement ride" or "ride" means a mechanical device that carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving the passengers amusement, pleasure, thrills or excitement. The term "amusement ride" does not include bungee jumping, zip lines, waterslides, or obstacle, challenge or adventure courses.

(b) "Ride operator" means the person having direct control of the starting, stopping, or speed of an amusement ride.

(c) "Owner or operator" means the person or organization that is responsible for the maintenance and operation of an amusement ride or amusement device.

(d) "Department" means the Mississippi Department of Revenue.

(e) "Serious injuries or illnesses" means a person's injury or illness that results in death, dismemberment, significant disfigurement, permanent loss of the use of a body organ, member, function, or system, a compound fracture, or other significant injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician.

(f) "Minor injuries or illnesses" means injuries and illnesses that may or may not require emergency first aid or significant treatment, or both, but

cannot be otherwise classified as a serious injury or illness. This term includes incidents where treatment is limited to such things as the dispensation of over-the-counter medication or plastic adhesive strips, cleansing, rest, and other similar duties or assistance.

**HISTORY: Laws, 2020, ch. ch. 350, § 1, eff from and after January 1, 2021.**

## § 45-49-3. Annual operating permit decal required; application; display of decal [Effective January 1, 2021].

(1) An amusement ride may not be operated in this state unless the Mississippi Department of Revenue has issued an operating permit decal for the amusement ride to the owner or operator within the preceding twelve (12) months.

(2) An application for an operating permit decal must be submitted to the department not fewer than fifteen (15) business days before the first time the amusement ride is operated in the state, and must include the following:

(a) Certificate of insurance in the amount of not less than One Million Dollars ($1,000,000.00) per occurrence that insures the owner or operator against liability for injury to persons and property arising out of the use or operation of the amusement ride;

(b) Payment of a fee not to exceed One Hundred Dollars ($100.00); and

(c) Proof of satisfactory inspection of the ride by a qualified inspector, as defined in Section 45-49-5, conducted no earlier than fifteen (15) days before the submission of the application for an operating permit decal. The date of the inspection must be indicated on the proof of inspection.

(3) The operating permit decal shall be valid for one (1) year from the date of issue and must be in a manner and format as prescribed by the department.

(4) The operating permit decal must be affixed to the ride in a conspicuous location that is plainly visible to patrons.

(5) The department shall:

(a) Determine the manner and format of the operating permit decal, any forms to be used to apply for the decal, and any forms to be used to report serious injuries or illnesses;

(b) Make any forms and certifications available on the department's website and provide decals to owners or operators;

(c) Subject to the limitations of this chapter, determine the fee for the filing of an operating permit decal;

(d) Allow an owner or operator to apply for operating permit decals for multiple rides at one time, using one (1) form; and

(e) Charge one (1) fee for the filing of each application form, regardless of the number of rides listed on the application.

**HISTORY: Laws, 2020, ch. ch. 350, § 2, eff from and after January 1, 2021.**

## § 45-49-5. Annual inspection; qualifications of inspector; obligation of owner or operator to operate in compliance with certain standard and keep and make available copies of forms, certifications and safety inspections [Effective January 1, 2021].

(1) The annual inspection required in Section 45-49-3 must be conducted by a qualified inspector. A qualified inspector must:

(a) Be certified:

(i) By the National Association of Amusement Ride Safety Officials at a minimum, as a Level I inspector; or

(ii) By the Amusement Industry Manufacturers and Suppliers International at a level that is equivalent to the certification under subparagraph (i) of this paragraph;

(b) Have twenty-four (24) months of employment experience in the field of amusement ride inspection; and

(c) Not be the owner or operator of the ride or an employee or agent of the owner or operator.

(2) The certificate of inspection shall certify that the ride is in substantial compliance with ASTM International Standard F770-19 concerning practices for ownership, operation, maintenance and inspection of amusement rides and devices.

(3) The owner or operator of an amusement ride shall:

(a) Operate, maintain and inspect all rides in substantial compliance with ASTM International Standard F770-19;

(b) Keep a paper or electronic copy of all required forms or certifications, and of all safety inspections conducted by the owner or operator during the preceding twelve (12) months, or until an inspection is repeated, whichever is longer for each ride:

(i) On or near that ride; or

(ii) At the office of the owner or operator; and

(c) Make those records available to the Mississippi Department of Revenue promptly upon request.

**HISTORY: Laws, 2020, ch. ch. 350, § 3, eff from and after January 1, 2021.**

## § 45-49-7. Ride operator qualifications; denial of entrance to any person if operator believes entrance jeopardizes safety of person or others; patron responsibility [Effective January 1, 2021].

(1) A ride operator must:

(a) Be at least sixteen (16) years of age;

(b) Operate only one (1) amusement ride at a time;

(c) Be in attendance at all times when the ride is operating; and

(d) Operate the ride in accordance with the ride manufacturer's specifications.

(2) To the extent permitted by law, an operator may deny any person entrance to an amusement ride if the operator believes that entrance by that person may jeopardize the safety of the person or other persons.

(3) Patron responsibility:

(a) There are inherent risks in the participation in or on any amusement ride. Patrons of an amusement ride, by participation, accept the risks inherent in such participation of which the ordinary prudent person is or should be aware. Patrons have the duty to exercise good judgment and act in a responsible manner while using the amusement ride, device, or attraction and to obey all oral or written warnings, or both, before or during participation, or both.

(b) Patrons have a duty to not participate in or on any amusement ride when under the influence of drugs or alcohol.

(c) Patrons have a duty to properly use all ride or device safety equipment provided.

(d) Any patron that violates the provisions of this subsection (3) shall be subject to immediate removal from the amusement facility without a refund of any admission charge.

(e) An owner or operator of an amusement ride shall display the potential penalties for violation of this section at each amusement ride.

**HISTORY: Laws, 2020, ch. ch. 350, § 4, eff from and after January 1, 2021.**

## § 45-49-9. Incident report log; contents of log; report of all serious injuries or illnesses resulting from operation of ride; immediate cessation of operation and preservation of condition of ride upon event of serious injury or illness pending investigation [Effective January 1, 2021].

(1) The owner or operator shall maintain an incident report log for all rider injuries or illnesses resulting from the operation of an amusement ride, other than minor injuries or illnesses resulting from the operation of an amusement park ride in this state. The recorded information must include, at a minimum, the following:

(a) The date the injury occurred;

(b) The name, address, and telephone number of the injured rider;

(c) The age of the injured rider;

(d) The manufacturer's name and serial number of the amusement ride involved in the injury;

(e) The name of the amusement ride in use at the location of the injury, if different from the manufacturer's name;

(f) A description of the injury including, to the extent known, its cause; and

(g) A description of any first-aid treatment administered to the injured rider.

(2) The owner or operator shall maintain the incident report log for a minimum of three (3) years.

(3) The owner or operator shall report all serious injuries or illnesses resulting from the operation of an amusement ride in this state, that do not result in death to the Mississippi Department of Revenue, in writing, within seventy-two (72) hours of the owner or operator being notified of the serious injury or illness.

(4) The owner or operator shall report all serious injuries or illnesses resulting from the operation of an amusement ride in this state, that result in death to the administrator within two (2) hours of the owner or operator being notified of the death. The owner or operator may initially notify the department verbally via telephone, but shall follow up with a written report of a death within twenty-four (24) hours of the owner or operator being notified of the death.

(5) In the event of a serious injury or illness resulting from the operation of an amusement ride in this state, the owner or operator shall immediately cease operation of the amusement ride except as necessary to prevent imminent harm to any person. The owner or operator shall take all reasonable steps to preserve the condition of the amusement ride pending an investigation by the department.

**HISTORY: Laws, 2020, ch. ch. 350, § 5, eff from and after January 1, 2021.**

## § 45-49-11. Investigation by Department of Revenue upon notification by owner or operator of serious injury or illness; department notification to owner or operator that investigation not warranted [Effective January 1, 2021].

(1) Within twenty-four (24) hours of notification by the owner or operator of a serious injury or illness, the Mississippi Department of Revenue may initiate an investigation into the reported serious injury or illness. If the department determines that an investigation is not warranted, the department shall promptly notify the owner or operator and the amusement ride may be reopened. If the department initiates an investigation, the amusement ride shall not be reopened to the public until such time as the department's investigation is complete and authorization to reopen is given to the owner or operator.

(2) The department's investigation shall be conducted with the assistance of a qualified inspector employed by the department or through contract with the department. The cost of any investigation shall be paid by the owner or operator.

(3) Any investigation must be conducted with all practicable speed to minimize the disruption of the amusement facility at which the amusement ride is located, as well as unrelated commercial activities.

(4) An investigation of a reported serious injury or illness must be completed immediately following the reasonable determination by the quali-

fied inspector or the department's designee that a principal cause of the serious injury or illness was the injured rider's failure to comply with the posted safety rules or with verbal instructions given by operators.

**HISTORY: Laws, 2020, ch. ch. 350, § 6, eff from and after January 1, 2021.**

## § 45-49-13. Applicability of chapter [Effective January 1, 2021].

The provisions of this chapter shall not apply to any nonprofit owner/operator who operates ten (10) rides or less.

**HISTORY: Laws, 2020, ch. ch. 350, § 7, eff from and after January 1, 2021.**

## § 45-49-15 Adoption of rules and regulations to implement chapter [Effective January 1, 2021].

The Commissioner of Revenue may adopt any rules and regulations necessary to implement the provisions of this chapter.

**HISTORY: Laws, 2020, ch. ch. 350, § 8, eff from and after January 1, 2021.**

# TITLE 47.

# PRISONS AND PRISONERS; PROBATION AND PAROLE


| | | |
|---|---|---|
| Chapter 1. | County and Municipal Prisons and Prisoners. .. | 47-1-1 |
| Chapter 5. | Correctional System. ..... | 47-5-1 |
| Chapter 7. | Probation and Parole. ..... | 47-7-1 |


# CHAPTER 1.

# COUNTY AND MUNICIPAL PRISONS AND PRISONERS


Sec.
47-1-1. Enforcement of sentences.


## § 47-1-1. Enforcement of sentences.

Every convict sentenced to imprisonment in the county jail, or to such imprisonment and the payment of a fine, or the payment of a fine, shall be committed to jail, and shall remain in close confinement for the full time specified for imprisonment in the sentence of the court, and in like confinement, subject to the provisions of Section 99-19-20.1, until the fine, costs and jail fees be fully paid, unless discharged in due course of law, or as hereinafter provided. Subject to the provisions of Section 99-19-20.1, no convict shall be held in continuous confinement under a conviction for any one (1) offense for failure to pay fine and costs in such case for a period of more than one (1) year.

**HISTORY: Codes, 1892, § 775; 1906, § 837; Hemingway's 1917, §§ 4015, 4030; 1930, § 4058; 1942, § 7899; Laws, 1908, ch. 109; Laws, 2018, ch. 416, § 4, eff from and after July 1, 2018.**

**Amendment Notes —** The 2018 amendment inserted "subject to the provisions of Section 99-19-20.1" in the first sentence and at the beginning of the second sentence; substituted "one (1) year" for "two (2) years" at the end of the last sentence; and made a minor stylistic change.

## § 47-1-21. Sheriff to keep a jail docket; what to contain.

**Editor' Note —** Laws of 2020, ch. 403, § 1, effective June 29, 2020, provides:

"SECTION 1. (1) There is hereby created an advisory committee on jail census data collection to promote criminal justice transparency by promulgating criteria to facilitate the availability of comparable and uniform data. The duties of the advisory committee are as follows:

"(a) Research the standards, format, and terminology used by authorities in other states and by the federal government to create uniform data-reporting regulations to be used for recording data on offenders incarcerated in the state's county jails and which will capture the following data:

"(i) The number of individuals detained for a new offense or delinquent act.

"(ii) The number of individuals detained pending trial.

"(iii) The number of offenders detained for a revocation of supervision.

"(iv) The average sentence length for new jail sentences by offense type.

"(v) The average sentence length for offenders in jail for a probation revocation.

"(vi) The average sentence length for offenders in jail for a parole revocation.

"(vii) The percentage of sentences in each category offense type, including whether the offense was a violent, property, drug, or public order offense. All drug offenses must include the type of drug implicated in the offense, as well as type of offense, such as possession, sale or manufacture.

"(viii) The average length of stay by offense type.

"(ix) For individuals awaiting trial, the average length of stay from the time of arrest to the time of indictment, and from the time of indictment to trial.

"(b) Research best practices for implementing a centralized database for reporting of the prescribed jail census data by each county authority and recommend a timeline for the submission of the data.

"(c) Recommend computer equipment and acceptable electronic processes for transmission of the data by each county to the Administrative Office of Courts.

"(d) The committee shall submit its report to the Legislature no later than December 1, 2020.

"(2) The committee shall be composed of five (5) members, as follows:

"(a) The Commissioner of Corrections or acting Commissioner of Corrections or a designee;

"(b) The State Public Defender or a designee;

"(c) The President of the Mississippi Prosecutors Association or a designee;

"(d) The President of the Mississippi Sheriffs' Association or a designee; and

"(e) A circuit court judge appointed by the Chief Justice of the Supreme Court.

"(3) Appointments must be made within thirty (30) days after the effective date of this act. No later than AUGUST 15, 2020, the committee must meet and organize by selecting from its membership a chairman and a vice chairman. The vice chairman shall also serve as secretary and is responsible for keeping all records of the committee. A majority of the members of the task force constitutes a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force is required. All members must be notified in writing of all meetings, and those notices shall be mailed at least fifteen (15) days before the date on which a meeting is to be held.

"(4) The Performance Evaluation and Expenditure Review Committee shall provide necessary staff support and the executive director shall coordinate the calling of the first meeting of the committee."

## § 47-1-27. Maltreatment forbidden.

### JUDICIAL DECISIONS

**1. In general.**

Trial judge did not err or abuse his discretion by denying defendant's motions for judgment notwithstanding the verdict and for a new trial because the evidence was sufficient for the jury to have found she made a deliberate decision not to provide sufficient medical attention to a prisoner, and her decision demonstrated a conscious disregard of a life-threatening risk; defendant knew the prisoner exhibited symptoms of a life-threatening condition and failed to send him to a medical provider. Brannan v. State, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020).

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (maltreatment) but also the type of maltreatment (failure to provide sufficient medical attention). Brannan v. State, — So. 3d —,

2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020).

Maltreatment statute was not vague or unconstitutional as applied to defendant because a nurse of ordinary intelligence would be able to read it and understand it; defendant was the only registered nurse at a correctional facility and the highest medical authority present during a prisoner's incarceration, and she decided not to have him taken to a hospital or a doctor and took it upon herself to diagnose him. Brannan v. State, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020).

Statute does not implicate any constitutional right, as there is no constitutionally protected interest in withholding medical attention from prisoners. Brannan v. State, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020).

## § 47-1-57. Furnishing of medical aid to prisoners; nurse screening for county prisoner for nonemergency medical complaints.

### RESEARCH REFERENCES

**ALR.**

Provision of Hormone Therapy or Sexual Reassignment Surgery to State Inmates with Gender Identity Disorder (GID). 89 A.L.R.6th 701.

## § 47-1-59. Hospitalization of prisoners; expenses.

### RESEARCH REFERENCES

**ALR.**

Provision of Hormone Therapy or Sexual Reassignment Surgery to State Inmates with Gender Identity Disorder (GID). 89 A.L.R.6th 701.

# CHAPTER 5.

# CORRECTIONAL SYSTEM

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## OPERATION, MANAGEMENT AND PERSONNEL

Sec.
47-5-6. Oversight Task Force established; composition; powers and duties.
47-5-20. Powers and duties of commissioner.
47-5-24. Commissioner of Corrections; appointment; compensation; qualifications; bond.

Sec.
47-5-26. Commissioner of Corrections; employment of deputy commissioners, administrative assistant for parole matters, and prison superintendents.
47-5-28. Additional powers and duties of commissioner.
47-5-105. Entry of bids, bills, and invoices in minutes before award or payment; copies to be sent.

## § 47-5-6. Oversight Task Force established; composition; powers and duties.

(1) There is hereby established a committee to be known as the Corrections and Criminal Justice Oversight Task Force, hereinafter called the Oversight Task Force, which must exercise the powers and fulfill the duties described in this chapter.

(2) The Oversight Task Force shall be composed of the following members:

(a) The Lieutenant Governor shall appoint two (2) members;

(b) The Speaker of the House of Representatives shall appoint two (2) members;

(c) The Commissioner of the Department of Corrections, or his designee;

(d) The Chief Justice of the Mississippi Supreme Court shall appoint one (1) member of the circuit court;

(e) The Governor shall appoint one (1) member from the Parole Board;

(f) The Director of the Joint Legislative Committee on Performance Evaluation and Expenditure Review, or his designee;

(g) The Attorney General shall appoint one (1) member representing the victims' community;

(h) The Mississippi Association of Supervisors shall appoint one (1) member to represent the association;

(i) The Mississippi Chief of Police Association shall appoint one (1) member to represent the association.

(j) The President of the Mississippi Prosecutors' Association;

(k) The President of the Mississippi Sheriffs' Association, or his designee;

(*l*) The Office of the State Public Defender shall appoint one (1) member to represent the public defender's office; and

(m) The Governor shall appoint one (1) advocate for offenders and families who have been directly affected by the prison justice system. The appointment made pursuant to this paragraph (m) shall occur on July 1, 2020.

(3) The task force shall meet on or before July 15, 2015, at the call of the Commissioner of the Department of Corrections and organize itself by electing one (1) of its members as chair and such other officers as the task force may consider necessary. Thereafter, the task force shall meet at least biannually and at the call of the chair or by a majority of the members. A quorum consists of seven (7) members.

(4) The task force shall have the following powers and duties:

(a) Track and assess outcomes from the recommendations in the Corrections and Criminal Justice Task Force report of December 2013;

(b) Prepare and submit an annual report no later than the first day of the second full week of each regular session of the Legislature on the outcome and performance measures to the Legislature, Governor and Chief Justice. The report shall include recommendations for improvements, recommendations on transfers of funding based on the success or failure of implementation of the recommendations, and a summary of savings. The report may also present additional recommendations to the Legislature on future legislation and policy options to enhance public safety and control corrections costs;

(c) Monitor compliance with sentencing standards, assess their impact on the correctional resources of the state and determine if the standards advance the adopted sentencing policy goals of the state;

(d) Review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;

(e) Develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length;

(f) Request, review, and receive data and reports on performance outcome measures as related to Chapter 457, Laws of 2014;

(g) To undertake such additional studies or evaluations as the Oversight Task Force considers necessary to provide sentencing reform information and analysis;

(h) Prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required;

(i) The Oversight Task Force shall use clerical and professional employees of the Department of Corrections for its staff;

(j) The Oversight Task Force may employ or retain other professional staff, upon the determination of the necessity for other staff;

(k) The Oversight Task Force may employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations of the Corrections and Criminal Justice Task Force report of December 2013;

(*l*) The Oversight Task Force is encouraged to apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

**HISTORY: Laws, 2014, ch. 457, § 68, effective from and after July 1, 2014; Laws, 2020, ch. 414, § 1, eff from and after passage (approved June 29, 2020).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in an internal statutory reference in subsection (2)(m) by substituting "pursuant to this paragraph (m)" for "pursuant to this paragraph (*l*)." The Joint Committee ratified the correction at its October 19, 2020, meeting.

**Amendment Notes.** The 2020 amendment, effective June 29, 2020, in (2), in (h), substituted "member" for "person," added (i), redesignated former (i) through (k) as (j) through (*l*) and made related changes, in (*l*), substituted "member" for "person," and added (m).

## § 47-5-10. Department of Corrections; general powers and duties.

**Editor's Notes —** Laws of 2016, ch. 444, § 1, provides:

"SECTION 1. (1) The Department of Finance and Administration, acting on behalf of the Mississippi Department of Corrections, is authorized to convey and transfer certain real property to the Mayor and the Board of Aldermen of the Town of Walnut Grove, Mississippi. The property is located in Leake County, Mississippi, and more particularly described as follows:

[For a complete description of the property, see Chapter 444, Laws of 2016.]

"(2) The Department of Finance and Administration may correct any discrepancies in the legal description of the property provided in this section.

"(3) The State of Mississippi shall retain all mineral rights to the real property conveyed and transferred under this section."

Laws of 2018, ch. 449, § 2, effective July 1, 2018, provides:

"SECTION 2.(1) The Department of Finance and Administration, acting on behalf of the Mississippi Department of Corrections, is authorized to convey and transfer certain real property to the governing authorities of the City of Corinth, Mississippi, and Alcorn County, Mississippi. The property is located in Alcorn County, Mississippi, and more particularly described as follows:

"[For complete property description, see Section 2 of Chapter 449, Laws of 2018.]

"(2) The Department of Finance and Administration may correct any discrepancies in the legal description of the property provided in this section.

"(3) The State of Mississippi shall retain all mineral rights to the real property conveyed and transferred under this section."

## § 47-5-20. Powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) To establish the general policy of the department;

(b) To approve proposals for the location of new facilities, for major renovation activities, and for the creation of new programs and divisions within the department as well as for the abolition of the same; provided, however, that the commissioner shall approve the location of no new facility unless the board of supervisors of the county or the governing authorities of the municipality in which the new facility is to be located shall have had the opportunity with at least sixty (60) days' prior notice to disapprove the location of the proposed facility. If either the board of supervisors or the governing authorities shall disapprove the facility, it shall not be located in that county or municipality. Said notice shall be made by certified mail, return receipt requested, to the members of the board or governing authorities and to the clerk thereof;

(c) Except as otherwise provided or required by law, to open bids and approve the sale of any products or manufactured goods by the department

according to applicable provisions of law regarding bidding and sale of state property, and according to rules and regulations established by the State Fiscal Management Board; and

(d) To adopt administrative rules and regulations including, but not limited to, offender transfer procedures, award of administrative earned time, personnel procedures, employment practices.

(e) To make personnel actions for a period of one (1) year beginning July 1, 2016, that are exempt from State Personnel Board rules, regulations and procedures in order to give the commissioner flexibility in making an orderly, effective and timely reorganization and realignment of the department.

**HISTORY: Laws, 1976, ch. 440, § 9; Laws, 1977, ch. 479, § 1; reenacted, Laws, 1981, ch. 465, § 13; reenacted, Laws, 1984, ch. 471, § 13; Laws, 1984, ch. 488, § 218; reenacted, Laws, 1986, ch. 413, § 13; Laws, 1988, ch. 504, § 6; Laws, 2016, ch. 495, § 2, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment added (e).

## § 47-5-24. Commissioner of Corrections; appointment; compensation; qualifications; bond.

(1) The Governor shall appoint a Commissioner of Corrections, with the advice and consent of the Senate. Such commissioner may be removed by the Governor. The commissioner shall be the chief executive, administrative and fiscal officer of the department.

(2) The commissioner shall receive an annual salary fixed by the Governor, not to exceed the maximum authorized by law, in addition to all actual, necessary expenses incurred in the discharge of official duties, including mileage as authorized by law.

(3) The commissioner shall possess the following minimum qualifications:

(a) A master's degree in corrections, criminal justice, guidance, social work, or some related field, and at least six (6) years full-time experience in corrections, including at least three (3) years of correctional management experience; or

(b) A bachelor's degree in a field described in subparagraph (a) of this subsection and at least ten (10) years full-time work in corrections, five (5) years of which shall have been in correctional management; or

(c) Shall possess relevant experience in the private or public sector.

(4) The commissioner shall be required, upon assuming the duties of his office, to execute a good and sufficient bond payable to the State of Mississippi in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00), conditioned upon an accurate accounting for all monies and property coming into his hands. The commissioner, upon approval by the Governor, may require of other officers, employees and agents of the department a good and sufficient bond in such sum as he may determine, subject to the minimum requirements set forth herein, payable to the State of Mississippi upon like condition. The bonds shall be approved by the Governor and filed with the Secretary of State, and shall be executed by a surety company authorized to do business under the laws of this

state. The premium on any such bond shall be paid by the state out of the support and maintenance fund of the department.

**HISTORY: Laws, 1976, ch. 440, § 13; Laws, 1978, ch. 520, § 11; reenacted, Laws, 1981, ch. 465, § 16; reenacted, Laws, 1984, ch. 471, § 16; reenacted, Laws, 1986, ch. 413, § 16; Laws, 1988, ch. 504, § 7, eff from and after passage (approved May 6, 1988); Laws, 2020, ch. 465, § 1, eff from and after passage (approved July 8, 2020).**

**Amendment Notes.** The 2020 amendment, effective July 8, 2020, rewrote (3)(c), which read: "Shall possess at least a bachelor's degree and relevant experience in fiscal management in the private or public sector."

## § 47-5-26. Commissioner of Corrections; employment of deputy commissioners, administrative assistant for parole matters, and prison superintendents.

(1) The commissioner shall employ the following personnel:

(a) A Deputy Commissioner for Administration and Finance, who shall supervise and implement all fiscal policies and programs within the department, supervise and implement all hiring and personnel matters within the department, supervise the department's personnel director, supervise and implement all purchasing within the department and supervise and implement all data processing activities within the department, and who shall serve as the Chief Executive Officer of the Division of Administration and Finance. He shall possess either:

(i) A master's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and four (4) years of experience in work related to the above-described duties, one (1) year of which must have included line or functional supervision; or

(ii) A bachelor's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and six (6) years of experience in work related to the above-described duties, one (1) year of which must have included line or functional supervision. Certification by the State of Mississippi as a certified public accountant may be substituted for one (1) year of the required experience.

(b) A Deputy Commissioner for Community Corrections, who shall initiate and administer programs, including, but not limited to, supervision of probationers, parolees and suspensioners, counseling, community-based treatment, interstate compact administration and enforcement, prevention programs, halfway houses and group homes, technical violation centers, restitution centers, presentence investigations, and work and educational releases, and shall serve as the Chief Executive Officer of the Division of Community Services. The Deputy Commissioner for Community Corrections is charged with full and complete cooperation with the State Parole Board and shall make monthly reports to the Chairman of the Parole Board in the

form and type required by the chairman, in his discretion, for the proper performance of the probation and parole functions. After a plea or verdict of guilty to a felony is entered against a person and before he is sentenced, the Deputy Commissioner for Community Corrections shall procure from any available source and shall file in the presentence records any information regarding any criminal history of the person such as fingerprints, dates of arrests, complaints, civil and criminal charges, investigative reports of arresting and prosecuting agencies, reports of the National Crime Information Center, the nature and character of each offense, noting all particular circumstances thereof and any similar data about the person. The Deputy Commissioner for Community Corrections shall keep an accurate and complete duplicate record of this file and shall furnish the duplicate to the department. This file shall be placed in and shall constitute a part of the inmate's master file. The Deputy Commissioner for Community Corrections shall furnish this file to the State Parole Board when the file is needed in the course of its official duties. He shall possess either: (i) a master's degree in counseling, corrections psychology, guidance, social work, criminal justice or some related field and at least four (4) years' full-time experience in such field, including at least one (1) year of supervisory experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, one (1) year of which shall have been at the supervisory level.

(c) A Deputy Commissioner for Institutions, who shall administer institutions, reception and diagnostic centers, prerelease centers and other facilities and programs provided therein, and shall serve as the Chief Executive Officer of the Division of Institutions. He shall possess either: (i) a master's degree in counseling, criminal justice, psychology, guidance, social work, business or some related field, and at least four (4) years' full-time experience in corrections, including at least one (1) year of correctional management experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, four (4) years of which shall have been at the correctional management level.

(d) A Deputy Commissioner for Programs, Education, Re-entry, and Vocational Rehabilitation Services who shall initiate and administer programs, including but not limited to, education services, religious services, moral rehabilitation, alcohol and drug rehabilitation, and court re-entry. The Deputy Commissioner for Programs, Education, Re-entry, and Vocational Rehabilitation may coordinate with any educational institution to develop a program for moral rehabilitation with an emphasis on promoting effective programs for release. The Deputy Commissioner for Programs, Education, Re-entry, and Vocational Rehabilitation shall focus on re-entry programs aimed at reducing recidivism and adequately preparing offenders for employment upon their release. The programs shall incorporate a moral component focused on providing offenders with an opportunity to make positive changes while incarcerated that will enable them to be productive

members of society upon their release. Such deputy commissioner shall possess either:

(i) A master's degree in counseling, corrections, psychology, guidance, social work, criminal justice or some related field and at least four (4) years' full-time experience in such field, including at least one (1) year of supervisory experience; or

(ii) A bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years full-time work in corrections, one (1) year of which shall have been at the supervisory level.

(2) The commissioner shall employ an administrative assistant for parole matters who shall be selected by the State Parole Board who shall be an employee of the department assigned to the State Parole Board and who shall be located at the office of the State Parole Board, and who shall work under the guidance, supervision and direction of the board.

(3) The administrative assistant for parole matters shall receive an annual salary to be established by the Legislature. The salaries of department employees not established by the Legislature shall receive an annual salary established by the State Personnel Board.

(4) The commissioner shall employ a superintendent for the Parchman facility, Central Mississippi Correctional Facility and South Mississippi Correctional Institution of the Department of Corrections. The Superintendent of the Mississippi State Penitentiary shall reside on the grounds of the Parchman facility. Each superintendent shall appoint an officer in charge when he is absent.

Each superintendent shall develop and implement a plan for the prevention and control of an inmate riot and shall file a report with the Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee on the first day of each regular session of the Legislature regarding the status of the plan.

In order that the grievances and complaints of inmates, employees and visitors at each facility may be heard in a timely and orderly manner, each superintendent shall appoint or designate an employee at the facility to hear grievances and complaints and to report grievances and complaints to the superintendent. Each superintendent shall institute procedures as are necessary to provide confidentiality to those who file grievances and complaints.

(5) For a one-year period beginning July 1, 2016, any person authorized for employment under this section shall not be subject to the rules, regulations and procedures of the State Personnel Board, except as otherwise provided under Section 25-9-127(5).

**HISTORY: Laws, 1976, ch. 440, § 14; Laws, 1978, ch. 520, § 12; reenacted, Laws, 1981, ch. 465, § 17; reenacted and amended, Laws, 1984, ch. 471, § 17; reenacted and amended, Laws, 1986, ch. 413, § 17; Laws, 1988, ch. 504, § 8; Laws, 1989, 1st Ex Sess, ch. 3, § 9; Laws, 1992, ch. 368 § 1; Laws, 1993, ch. 577, § 1; Laws, 1995, ch 419, § 1; Laws, 2002, ch. 624, § 1; Laws, 2014, ch. 457, § 63; Laws, 2016, ch. 495, § 3, eff from and after July 1, 2016; Laws, 2020, ch. 485, § 7, eff from and after July 1, 2020.**

**Amendment Notes** — The 2016 amendment added (5).

The 2020 amendment added (1)(d); and in (2), inserted "who shall be selected by the State Parole Board" and "and who shall be located at the office of the State Parole Board," and substituted "guidance, supervision and direction of the board" for "guidance and supervision of the board."

## § 47-5-28. Additional powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) To implement and administer laws and policy relating to corrections and coordinate the efforts of the department with those of the federal government and other state departments and agencies, county governments, municipal governments, and private agencies concerned with providing offender services;

(b) To establish standards, in cooperation with other state agencies having responsibility as provided by law, provide technical assistance, and exercise the requisite supervision as it relates to correctional programs over all state-supported adult correctional facilities and community-based programs;

(c) To promulgate and publish such rules, regulations and policies of the department as are needed for the efficient government and maintenance of all facilities and programs in accord insofar as possible with currently accepted standards of adult offender care and treatment;

(d) To provide the Parole Board with suitable and sufficient office space and support resources and staff necessary to conducting Parole Board business under the guidance of the Chairman of the Parole Board;

(e) To contract for transitional reentry center beds that will be used as noncorrections housing for offenders released from the department on parole, probation or post-release supervision but do not have appropriate housing available upon release. At least one hundred (100) but no more than eight hundred (800) transitional reentry center beds contracted by the department and chosen by the Parole Board shall be available for the Parole Board to place parolees without appropriate housing;

(f) To designate deputy commissioners while performing their officially assigned duties relating to the custody, control, transportation, recapture or arrest of any offender within the jurisdiction of the department or any offender of any jail, penitentiary, public workhouse or overnight lockup of the state or any political subdivision thereof not within the jurisdiction of the department, to the status of peace officers anywhere in the state in any matter relating to the custody, control, transportation or recapture of such offender, and shall have the status of law enforcement officers and peace officers as contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

For the purpose of administration and enforcement of this chapter, deputy commissioners of the Mississippi Department of Corrections, who are certified by the Mississippi Board on Law Enforcement Officer Standards and Training, have the powers of a law enforcement officer of this state. Such powers shall include to make arrests and to serve and execute search

warrants and other valid legal process anywhere within the State of Mississippi while performing their officially assigned duties relating to the custody, control, transportation, recapture or arrest of any offender within the jurisdiction of the department or any offender of any jail, penitentiary, public workhouse or overnight lockup of the state or any political subdivision thereof not within the jurisdiction of the department in any matter relating to the custody, control, transportation or recapture of such offender.

(g) To make an annual report to the Governor and the Legislature reflecting the activities of the department and make recommendations for improvement of the services to be performed by the department;

(h) To cooperate fully with periodic independent internal investigations of the department and to file the report with the Governor and the Legislature;

(i) To make personnel actions for a period of one (1) year beginning July 1, 2016, that are exempt from State Personnel Board rules, regulations and procedures in order to give the commissioner flexibility in making an orderly, effective and timely reorganization and realignment of the department; and

(j) To perform such other duties necessary to effectively and efficiently carry out the purposes of the department as may be directed by the Governor.

**HISTORY: Laws, 1976, ch. 440, § 15; reenacted, Laws, 1981, ch. 465, § 18; reenacted, Laws, 1984, ch. 471, § 18; reenacted, Laws, 1986, ch. 413, § 18; Laws, 1988, ch. 504, § 9; Laws, 1989, 1st Ex Sess, ch. 3, § 10; Laws, 1995, ch. 416, § 2; Laws, 2014, ch. 457, § 49; Laws, 2016, ch. 495, § 4, eff from and after July 1, 2016; Laws, 2020, ch. 485, § 8, eff from and after July 1, 2020.**

**Amendment Notes** — The 2016 amendment added (h), and redesignated former (h) and (i).

The 2020 amendment, in (e), inserted "but no more than eight hundred (800)"; added (f); and redesignated former (f) through (i) as (g) through (j).

## § 47-5-76. Payment of court costs for inmate's civil action against Department employee pertaining to condition of confinement.

### JUDICIAL DECISIONS

**1. In general.**

Because an inmate's complaint—regarding the alleged confiscation of the inmate's personal property during the inmate's confinement in lock-down—was frivolous and because the inmate should not have been allowed to file the complaint as an in forma pauperis litigant due to the inmate's prior frivolous filings, it was appropriate to assess costs of the inmate's appeal to the inmate to be withdrawn from the inmate's prison account. Duncan v. Bonner, — So. 3d —, 2020 Miss. App. LEXIS 315 (Miss. Ct. App. May 26, 2020).

Inmate may be granted in forma pauperis (IFP) status on appeal under the statute; the language referencing appeals in the 1998 and 2005 amendments allows a trial court to grant an inmate IFP status on appeal. Willis v. Westley, 287 So. 3d 1050, 2019 Miss. App. LEXIS 611 (Miss. Ct. App. 2019).

Statute's language provided the trial

court with authority to allow an inmate to proceed in forma pauperis (IFP) on appeal because the inmate filed his action against Mississippi Department of Corrections employees under § 47-5-76(1), challenging a condition of confinement. Willis v. Westley, 287 So. 3d 1050, 2019 Miss. App. LEXIS 611 (Miss. Ct. App. 2019).

It was appropriate to assess costs of an appeal to an inmate, despite his in forma pauperis status, as the Mississippi Department of Corrections was entitled to withdraw funds from the inmate's account until all fees and costs of his appeal were repaid. Willis v. Westley, 287 So. 3d 1050, 2019 Miss. App. LEXIS 611 (Miss. Ct. App. 2019).

## § 47-5-105. Entry of bids, bills, and invoices in minutes before award or payment; copies to be sent.

The award of all contracts within the purview of the Department of Finance and Administration under Section 27-104-7 in excess of Five Hundred Thousand Dollars ($500,000.00) entered into by the commissioner shall be approved by the Public Procurement Review Board and shall be entered on the minutes of such board before any funds shall be expended therefor. Provided further, that the entrance of the award of contracts on the minutes of the Public Procurement Review Board shall contain a detailed accounting of all bids entered showing clearly the lowest bid and best bid that was awarded in each and every case and, if the bid accepted is not the lowest, then the reasons and justification for not accepting the lowest bid shall be spread on the minutes. A true copy of the minutes of each meeting of the Public Procurement Review Board shall be sent monthly to the Governor, members of the Legislative Budget Office and Chairmen of the Corrections Committees of the Senate and the House of Representatives.

**HISTORY: Laws, 1974, ch. 539, § 27; Laws, 1976, ch. 440, § 52; reenacted, Laws, 1981, ch. 465, § 55; reenacted, Laws, 1984, ch. 471, § 50; Laws, 1984, ch. 488, § 224; reenacted, Laws, 1986, ch. 413, § 50; Laws, 1988, ch. 504, § 21; Laws, 2012, ch. 388, § 1; Laws, 2016, ch. 355, § 1, eff from and after July 1, 2016.**

**Amendment Notes —** The 2016 amendment inserted "within the purview of the Department of Finance and Administration under Section 27-104-7" in the first sentence; and made a minor stylistic change in the last sentence.

# OFFENDERS

## § 47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.

### JUDICIAL DECISIONS

**4. Early release.**

Defendant's sentence did not exceed the statutory maximum because the order only sent her to a restitution center if she was released on Earned Release Supervision or some other form of early release, and if she were released on Earned Release Supervision, any remaining time

she served in a restitution center cannot exceed her statutory maximum sentence under state law. Stevens v. State, 294 So. 3d 699, 2020 Miss. App. LEXIS 128 (Miss. Ct. App. 2020).

## § 47-5-138.1. Trusties authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance.

### JUDICIAL DECISIONS

**1. In general; construction.**

Circuit court erred in denying defendant's motion for post-conviction relief because his plea was not knowingly, intelligently, and voluntarily made as a result of the erroneous advice given to him by his appointed trial counsel—that a sentence for second-degree murder would be eligible for trusty-earned time—the judge did not discuss or mention defendant's eligibility of trusty-earned time or that any term of incarceration would be served day for day during the plea colloquy, and the plea petition did not contradict in any shape or form defendant's erroneous expectation about trusty-earned time, parole, or early release. Ulmer v. State, 292 So. 3d 611, 2020 Miss. App. LEXIS 85 (Miss. Ct. App. 2020).

Because appellant's argument that his sentence should be reduced or his probation modified under Miss. Code Ann. § 47-5-138.1 was raised for the first time on appeal, it was procedurally barred, and appellant failed to implicate a fundamental constitutional right to except his argument from the procedural bar, therefore the trial court properly dismissed appellant's motion for postconviction relief. Monroe v. State, 203 So. 3d 1140, 2016 Miss. App. LEXIS 675 (Miss. Ct. App. 2016).

Inmate's trusty-time credit was properly revoked because (1) anyone convicted of a sex offense was not eligible for such time, and (2) the inmate had been convicted of sexual battery, conspiracy to commit sexual battery, and contributing to the delinquency of a minor who was sexually abused. King v. McCarty, 196 So. 3d 175, 2016 Miss. App. LEXIS 405 (Miss. Ct. App. 2016).

## § 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general; construction.
7. Miscellaneous.

**1. In general; construction.**

A prisoner may not earn good time during service of a mandatory portion of his period of confinement and later use that good time earned upon expiration of the mandatory portion of his sentence. Wilson v. Puckett, 721 So. 2d 1110, 1998 Miss. LEXIS 434 (Miss. 1998).

**7. Miscellaneous.**

Inmate's claim of ineffective assistance lacked merit, as the inmate's claims that he would not have entered his guilty plea for fondling if his attorney had not misrepresented his eligibility for parole was contradicted by the fact that, at the plea hearing, he indicated he had not been promised anything in order to make him enter his guilty plea and was aware of the maximum sentence that could have been imposed. Brown v. State, 187 So. 3d 667, 2016 Miss. App. LEXIS 132 (Miss. Ct. App. 2016).

# ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC DRUGS, WEAPONS, AND OTHER CONTRABAND

Sec.
47-5-193. Prohibitions generally; circuit court authorized to order disabling of contraband cell phone service from carrier.

## § 47-5-193. Prohibitions generally; circuit court authorized to order disabling of contraband cell phone service from carrier.

(1) It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined, of any municipal or other correctional facility in this state, or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, contraband item, or cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, contraband item, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers on property within the state belonging to the department, a county, a municipality, or other entity that is occupied or used by offenders, except as authorized by law.

(2) The circuit court is authorized to issue an order to disable the contraband cell phone service from the carrier.

**HISTORY: Laws, 1978, ch. 394, § 1; Laws, 1986, ch. 423, § 4; Laws, 1996, ch. 420, § ; Laws, 1998, ch. 391, § 1; Laws, 2004, ch. 429, § 1; Laws, 2006, ch. 439, § 1; Laws, 2008, ch. 415, § 1; Laws, 2012, ch. 325, § 1, eff from and after passage (approved Apr. 5, 2012.); Laws, 2019, ch. 449, § 1, eff from and after passage (approved April 3, 2019).**

**Amendment Notes** — The 2019 amendment, effective April 3, 2019, added (2).

### JUDICIAL DECISIONS

#### ANALYSIS

1. Evidence.
2. — Sufficient.
3.5. Presumptive instructions.
8. Burden of proof.

**1. Evidence.**

**2. — Sufficient.**

Assuming that the State of Mississippi was required to prove that defendant was an inmate of a county jail, the evidence supported defendant's conviction for unauthorized possession of a cell phone in a county jail because, although the booking process had not been completed, defendant was in a locked area, dressed in a jail uniform, and was not free to leave. When defendant put defendant's belongings on a counter, the cell phone, among other items, fell out of a rolled up mat that the

jail had provided to defendant. Smith v. State, 275 So. 3d 100, 2019 Miss. App. LEXIS 238 (Miss. Ct. App. 2019).

**3.5. Presumptive instructions.**

Trial court erred in convicting defendant of possessing a cell phone in a correctional facility because the jury was wrongly instructed that they could convict defendant if the state proved defendant took the cell phone into the correctional facility; transporting contraband and possessing contraband are distinctly different. Instructing the jury as to persons taking cell phones into correctional facilities did not track the language of the applicable statute and improperly shifted the burden of proving the defendant was not in constructive possession of the cell phone to the defendant. Moody v. State, 202 So. 3d 1235, 2016 Miss. LEXIS 447 (Miss. 2016).

**8. Burden of proof.**

Defendant was indicted and convicted under the first sentence of the statute, for possession of a cell phone in a correctional facility. Therefore, the State of Mississippi was not required to prove that the county jail was property belonging to the county and that the property was occupied or used by offenders because these elements were not essential to the possession of a cell phone crime charged under the first sentence. Smith v. State, 275 So. 3d 100, 2019 Miss. App. LEXIS 238 (Miss. Ct. App. 2019).

State of Mississippi was not required to prove that defendant was an inmate at the county jail because this factual allegation did not change the crime charged as all that the statute required was that defendant be either a person or offender in possession of a cell phone at a correctional facility. Smith v. State, 275 So. 3d 100, 2019 Miss. App. LEXIS 238 (Miss. Ct. App. 2019).

## § 47-5-198. Sale, possession, or use of controlled substances or narcotic drugs within facilities; knowledge by employees; punishment for violations.

### JUDICIAL DECISIONS

#### ANALYSIS

3. Sufficient evidence.
4. Indictment.

**3. Sufficient evidence.**

Trial court did not err by denying defendant's motions for a directed verdict, JNOV, or a new trial, as the evidence showed that defendant told the warden that the pills hidden inside the waistband of her pants were controlled substances. Warren v. State, 187 So. 3d 616, 2016 Miss. LEXIS 137 (Miss. 2016).

Evidence supported defendant's conviction of conspiracy to possess a controlled substance inside a correctional facility because (1) an officer observed defendant and another inmate stand by the exterior door to a jail's yard, bend down, and retrieve items from underneath the door; [2] an officer found a small opening that could allow someone to slip an item through the door; and (3) officers found marijuana in envelopes in a blanket that defendant tried to pass to the other inmate when the inmates were searched as they reentered the jail. Graham v. State, 204 So. 3d 329, 2016 Miss. App. LEXIS 113 (Miss. Ct. App. 2016).

**4. Indictment.**

Indictment, which tracked the language of this section, was sufficient, and, because neither the crime nor the penalty depended upon the identity of the controlled substance, the indictment for possession of a controlled substance in a correctional facility did not need to identify the substance allegedly possessed. Warren v. State, 187 So. 3d 616, 2016 Miss. LEXIS 137 (Miss. 2016).

Although defendant asserted that the indictment was fatally defective for failure to specify the contraband that defendant conspired to possess in a correctional

facility, the two count indictment included the essential statutory elements of the charges against defendant and provided sufficient notice so that defendant suffered no prejudice in preparing a defense. Furthermore, defendant was procedurally barred from arguing an objection to a multi-count indictment on appeal because defendant failed to raise the objection at trial. Graham v. State, 204 So. 3d 329, 2016 Miss. App. LEXIS 113 (Miss. Ct. App. 2016).

Trial court erred in denying defendant's motion to dismiss due to a defective indictment where the indictment failed to specify the nature of the controlled substance that defendant was alleged to have possessed in violation of Miss. Code Ann. § 47-5-198, and the State's failure to include the identity of the controlled substance prevented defendant from preparing a defense that her possession of the controlled substance was lawful. Warren v. State, 187 So. 3d 631, 2015 Miss. App. LEXIS 40 (Miss. Ct. App. 2015), rev'd, 187 So. 3d 616, 2016 Miss. LEXIS 137 (Miss. 2016).

Although Mississippi caselaw on the issue of whether an indictment sufficiently specifies the nature of the controlled substance primarily addresses possession and trafficking of controlled substances pursuant to Miss. Code Ann. § 41-29-139 (Supp. 2014), the Court of Appeals of Mississippi sees no reason why this same reasoning should not extend to possession of a controlled substance in a correctional facility pursuant to Miss. Code Ann. § 47-5-198. Warren v. State, 187 So. 3d 631, 2015 Miss. App. LEXIS 40 (Miss. Ct. App. 2015), rev'd, 187 So. 3d 616, 2016 Miss. LEXIS 137 (Miss. 2016).

## JOINT STATE-COUNTY WORK PROGRAM

Sec.

47-5-471. Department of Corrections to make available to requesting counties eligible inmates for participation in state-county work program; counties responsible for transportation and expenses related to housing and caring for inmates.

### § 47-5-471 Department of Corrections to make available to requesting counties eligible inmates for participation in state-county work program; counties responsible for transportation and expenses related to housing and caring for inmates.

Upon the request of any county for eligible inmates, the Department of Corrections shall make available for participation in the state-county work program in the requesting county any eligible inmates. Upon request and approval of such request by the Department of Corrections, the requesting county shall arrange for transportation of such inmates from the Department of Corrections to such county. Upon receiving any inmates, the county shall be responsible for all expenses related to housing and caring for such inmates but shall be reimbursed by the Department of Corrections at the rate prescribed under Section 47-5-901(2). Regardless of any eligibility criteria established by the Department of Corrections, no inmate convicted of a sex crime, a crime of violence as defined by Section 97-3-2, or any other crime which specifically prohibits parole shall be eligible for participation in the program. The requesting county may, in its sole discretion, refuse any inmate deemed to present an undue risk to such county.

**HISTORY: Laws, 2018, ch. 416, § 9, eff from and after July 1, 2018; Laws, 2020, ch. 485, § 9, eff from and after July 1, 2020.**

**Amendment Notes.** The 2020 amendment, in the third sentence, added "but shall be reimbursed by the Department of Corrections at the rate prescribed under Section 47-5-901(2)"; and deleted the former fourth sentence, which read: "The Department of Corrections shall not be obligated to pay the county for any costs associated with housing or caring for such inmates, while the inmates are in the custody of the county for the purposes of the state-county work program."

## PRISON OVERCROWDING EMERGENCY POWERS ACT

Sec.
47-5-711. Powers of Governor upon receipt of reports [Repealed effective July 1, 2022].
47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

### § 47-5-701. Short title [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 1; reenacted, Laws, 1986, ch. 413, § 127; reenacted, Laws, 1987, ch. 335, § 1; reenacted, Laws, 1988, ch. 504, § 44; reenacted, Laws, 1990, ch. 315, § 1; reenacted, Laws, 1993, ch. 419, § 1; reenacted without change, Laws, 1999, ch. 537, § 1; reenacted without change, Laws, 2001, ch. 411, § 1; reenacted without change, Laws, 2002, ch. 615, § 1; reenacted without change, Laws, 2005, ch. 519, § 1; reenacted without change, Laws, 2006, ch. 395, § 1; reenacted without change, Laws, 2008, ch. 322, § 1; reenacted without change, Laws, 2012, ch. 322, § 1; reenacted without change, Laws, 2014, ch. 316, § 1, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 1, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 1, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment reenacted the section without change.

### § 47-5-703. Definitions [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 2; reenacted, Laws, 1986, ch. 413, § 128; reenacted, Laws, 1987, ch. 335, § 2; reenacted and amended, Laws, 1988, ch. 504, § 45; reenacted, Laws, 1990, ch. 315, § 2; reenacted, Laws, 1993, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 537, § 2; reenacted without change, Laws, 2001, ch. 411, § 2; reenacted without change, Laws, 2002, ch. 615, § 2; reenacted without change, Laws, 2005, ch. 519, § 2; reenacted without change, Laws, 2006, ch. 395, § 2; reenacted without change, Laws, 2008, ch. 322, § 2; reenacted without change, Laws, 2012, ch. 322, § 2; reenacted without change, Laws, 2014, ch. 316, § 2, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 2, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 2, effective from and after July 1, 2018. Since the language of the section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-705. Requirements for declaration of state of emergency [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 3; reenacted, Laws, 1986, ch. 413, § 129; reenacted, Laws, 1987, ch. 335, § 3; reenacted, Laws, 1988, ch. 504, § 46; reenacted, Laws, 1990, ch. 315, § 3; reenacted, Laws, 1993, ch. 419, § 3; reenacted without change, Laws, 1999, ch. 537, § 3; reenacted without change, Laws, 2001, ch. 411, § 3; reenacted without change, Laws, 2002, ch. 615, § 3; reenacted without change, Laws, 2005, ch. 519, § 3; reenacted without change, Laws, 2006, ch. 395, § 3; reenacted and amended, Laws, 2008, ch. 322, § 3; reenacted without change, Laws, 2012, ch. 322, § 3; reenacted without change, Laws, 2014, ch. 316, § 3, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 3, eff from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 3, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-707. Notice of overcrowded prison conditions; thirty-day report of overcrowded prison conditions [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 4; reenacted, Laws, 1986, ch. 413, § 130; reenacted, Laws, 1987, ch. 335, § 4; reenacted and amended, Laws, 1988, ch. 504, § 47; reenacted, Laws, 1990, ch. 315, § 4; reenacted, Laws, 1993, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 537, § 4; reenacted without change, Laws, 2001, ch. 411, § 4; reenacted without change, Laws, 2002, ch. 615, § 4; reenacted without change, Laws, 2005, ch. 519, § 4; reenacted without change, Laws, 2006, ch. 395, § 4; reenacted without change, Laws, 2008, ch. 322, § 4; reenacted without change, Laws, 2012, ch. 322, § 4; reenacted without change, Laws, 2014, ch. 316, § 4, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 4, from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 4, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-709. Thirty-day report by State Parole Board [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 5; reenacted, Laws, 1986, ch. 413, § 131; reenacted, Laws, 1987, ch. 335, § 5; reenacted, Laws, 1988, ch. 504, § 48; reenacted, Laws, 1990, ch. 315, § 5; reenacted, Laws, 1993, ch. 419, § 5;**

**reenacted without change, Laws, 1999, ch. 537, § 5; reenacted without change, Laws, 2001, ch. 411, § 5; reenacted without change, Laws, 2002, ch. 615, § 5; reenacted without change, Laws, 2005, ch. 519, § 5; reenacted without change, Laws, 2006, ch. 395, § 5; reenacted without change, Laws, 2008, ch. 322, § 5; reenacted without change, Laws, 2012, ch. 322, § 5; reenacted without change, Laws, 2014, ch. 316, § 5, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 5, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 5, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment reenacted the section without change.

## § 47-5-711. Powers of Governor upon receipt of reports [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 6; reenacted, Laws, 1986, ch. 413, § 132; reenacted, Laws, 1987, ch. 335, § 6; reenacted and amended, Laws, 1988, ch. 504, § 49; reenacted, Laws, 1990, ch. 315, § 6; reenacted, Laws, 1993, ch. 419, § 6; reenacted without change, Laws, 1999, ch. 537, § 6; reenacted without change, Laws, 2001, ch. 411, § 6; reenacted without change, Laws, 2002, ch. 615, § 6; reenacted without change, Laws, 2005, ch. 519, § 6; reenacted without change, Laws, 2006, ch. 395, § 6; reenacted and amended, Laws, 2008, ch. 322, § 6; reenacted without change, Laws, 2012, ch. 322, § 6; reenacted without change, Laws, 2014, ch. 316, § 6, eff from and after July 1, 2018; reenacted without change, Laws 2018, ch. 406 § 6, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 6, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment reenacted the section without change.

## § 47-5-715. Weekly certification of population figures during state of emergency; termination of state of emergency [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 8; reenacted, Laws, 1986, ch. 413, § 134; reenacted, Laws, 1987, ch. 335, § 8; reenacted, Laws, 1988, ch. 504, § 51; reenacted, Laws, 1990, ch. 315, § 8; reenacted, Laws, 1993, ch. 419, § 8; reenacted without change, Laws, 1999, ch. 537, § 8; reenacted without change, Laws, 2001, ch. 411, § 8; reenacted without change, Laws, 2002, ch. 615, § 8; reenacted without change, Laws, 2005, ch. 519, § 8; reenacted without change, Laws, 2006, ch. 395, § 8; reenacted without change, Laws, 2008, ch. 322, § 8; reenacted without change, Laws, 2012, ch. 322, § 8; reenacted without change, Laws, 2014, ch. 316, § 8, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 8, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 8, effective from and after July 1, 2018. Since the language of the section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-717. Sixty-day report of overcrowded prison conditions [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 9; reenacted, Laws, 1986, ch. 413, § 135; reenacted, Laws, 1987, ch. 335, § 9; reenacted and amended, Laws, 1988, ch. 504, § 52; reenacted, Laws, 1990, ch. 315, § 9; reenacted, Laws, 1993, ch. 419, § 9; reenacted without change, Laws, 1999, ch. 537, § 9; reenacted without change, Laws, 2001, ch. 411, § 9; reenacted without change, Laws, 2002, ch. 615, § 9; reenacted without change, Laws, 2005, ch. 519, § 9; reenacted without change, Laws, 2006, ch. 395, § 9; reenacted without change, Laws, 2008, ch. 322, § 9; reenacted without change, Laws, 2012, ch. 322, § 9; reenacted without change, Laws, 2014, ch. 316, § 9, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 9, eff from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 9, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-719. Powers of Governor upon receipt of report [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 10; reenacted, Laws, 1986, ch. 413, § 136; reenacted, Laws, 1987, ch. 335, § 10; reenacted and amended, Laws, 1988, ch. 504, § 53; reenacted, Laws, 1990, ch. 315, § 10; reenacted, Laws, 1993, ch. 419, § 10; reenacted without change, Laws, 1999, ch. 537, § 10; reenacted without change, Laws, 2001, ch. 411, § 10; reenacted without change, Laws, 2002, ch. 615, § 10; reenacted without change, Laws, 2005, ch. 519, § 10; reenacted without change, Laws, 2006, ch. 395, § 10; reenacted and amended, Laws, 2008, ch. 322, § 10; reenacted without change Laws, 2012, ch. 322, § 10; reenacted without change, Laws, 2014, ch. 316, § 10, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 10, eff from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 10, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-721. Termination of state of emergency by order of Governor [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 11; reenacted, Laws, 1986, ch. 413, § 137; reenacted, Laws, 1987, ch. 335, § 11; reenacted, Laws, 1988, ch. 504, § 54; reenacted, Laws, 1990, ch. 315, § 11; reenacted, Laws, 1993, ch. 419, § 11; reenacted without change, Laws, 1999, ch. 537, § 11; reenacted without**

**change, Laws, 2001, ch. 411, § 11; reenacted without change, Laws, 2002, ch. 615, § 11; reenacted without change, Laws, 2005, ch. 519, § 11; reenacted without change, Laws, 2006, ch. 395, § 11; reenacted without change, Laws, 2008, ch. 322, § 11; reenacted without change, Laws, 2012, ch. 322, § 11; reenacted without change, Laws, 2014, ch. 316, § 11, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 11, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 11, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment reenacted the section without change.

## § 47-5-723. Revocation of conditional advancement of parole eligibility date [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 12; reenacted, Laws, 1986, ch. 413, § 138; reenacted, Laws, 1987, ch. 335, § 12; reenacted, Laws, 1988, ch. 504, § 55; reenacted, Laws, 1990, ch. 315, § 12; reenacted, Laws, 1993, ch. 419, § 12; reenacted without change, Laws, 1999, ch. 537, § 12; reenacted without change, Laws, 2001, ch. 411, § 12; reenacted without change, Laws, 2002, ch. 615, § 12; reenacted without change, Laws, 2005, ch. 519, § 12; reenacted without change, Laws, 2006, ch. 395, § 12; reenacted without change, Laws, 2008, ch. 322, § 12; reenacted without change, Laws, 2012, ch. 322, § 12; reenacted without change, Laws, 2014, ch. 316, § 12, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 12, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 12, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment reenacted the section without change.

## § 47-5-725. Conditions of advancement of parole eligibility date [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 13; reenacted, Laws, 1986, ch. 413, § 139; reenacted, Laws, 1987, ch. 335, § 13; reenacted, Laws, 1988, ch. 504, § 56; reenacted, Laws, 1990, ch. 315, § 13; reenacted, Laws, 1993, ch. 419, § 13; reenacted without change, Laws, 1999, ch. 537, § 13; reenacted without change, Laws, 2001, ch. 411, § 13; reenacted without change, Laws, 2002, ch. 615, § 13; reenacted without change, Laws, 2005, ch. 519, § 13; reenacted without change, Laws, 2006, ch. 395, § 13; reenacted without change, Laws, 2008, ch. 322, § 13; reenacted without change, Laws, 2012, ch. 322, § 13; reenacted without change, Laws, 2014, ch. 316, § 13, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 13, eff from and after July 1, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 406, § 13, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-727. Advancement of parole eligibility date to be independent of other adjustments [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 14; reenacted, Laws, 1986, ch. 413, § 140; reenacted, Laws, 1987, ch. 335, § 14; reenacted, Laws, 1988, ch. 504, § 57; reenacted, Laws, 1990, ch. 315, § 14; reenacted, Laws, 1993, ch. 419, § 14; reenacted without change, Laws, 1999, ch. 537, § 14; reenacted without change, Laws, 2001, ch. 411, § 14; reenacted without change, Laws, 2002, ch. 615, § 14; reenacted without change, Laws, 2005, ch. 519, § 14; reenacted without change, Laws, 2006, ch. 395, § 14; reenacted and amended, Laws, 2008, ch. 322, § 14; reenacted without change Laws, 2012, ch. 322, § 14; reenacted without change, Laws, 2014, ch. 316, § 14, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 406, § 14, eff from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 14, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-729. Establishment and quarterly certification or alteration of operating capacities [Repealed effective July 1, 2022].

**HISTORY: Laws, 1985, ch. 499, § 15; reenacted, Laws, 1986, ch. 413, § 141; reenacted, Laws, 1987, ch. 335, § 15; reenacted and amended, Laws, 1988, ch. 504, § 58; reenacted, Laws, 1990, ch. 315, § 15; reenacted, Laws, 1993, ch. 419, § 15; reenacted without change, Laws, 1999, ch. 537, § 15; reenacted without change, Laws, 2001, ch. 411, § 15; reenacted without change, Laws, 2002, ch. 615, § 15; reenacted without change, Laws, 2005, ch. 519, § 15; reenacted without change, Laws, 2006, ch. 395, § 15; reenacted without change, Laws, 2008, ch. 322, § 15; reenacted without change Laws, 2012, ch. 322, § 15; reenacted without change, Laws, 2014, ch. 316, § 15, eff from and after passage (approved Mar. 12, 2014.); reenacted without change Laws, 2018, ch. 406, § 15, eff from and after July 1, 2018; reenacted without change Laws, 2018, ch. 406, § 15, eff from and after July 1, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 406, § 15, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment reenacted the section without change.

## § 47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

Sections 47-5-701 through 47-5-729, Mississippi Code of 1972, which create the Prison Overcrowding Emergency Powers Act, shall stand repealed from and after July 1, 2022.

**HISTORY: Laws, 1986, ch. 413, § 142; Laws, 1987, ch. 335, § 16; Laws, 1988, ch. 504, § 59; Laws, 1990, ch. 315, § 16; Laws, 1991, ch. 378 § 1; Laws, 1993, ch. 419, § 16; Laws, 1994, ch. 312, § 1; Laws, 1995, ch. 389, § 1; Laws, 1999, ch. 537, § 16; Laws, 2001, ch. 411, § 16; Laws, 2002, ch. 615 , § 16; reenacted and amended, Laws, 2005, ch. 519, § 16; Laws, 2006, ch. 395, § 16; Laws, 2008, ch. 322, § 16; reenacted and amended, Laws, 2012, ch. 322, § 16; reenacted and amended, Laws, 2014, ch. 316, § 16, eff from and after passage (approved Mar. 12, 2014); Laws, 2018, ch. 327, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 406, § 16, eff from and after July 1, 2018.**

**Joint Legislative Committee Note —** Section 1 of Chapter 327, Laws of 2018, effective from and after July 1, 2018 (approved March 7, 2018), amended this section. Section 16 of Chapter 406, Laws of 2018, effective from and after July 1, 2018 (approved March 21, 2018), also amended this section. As set out above, this section reflects the language of Section 16 of Chapter 406, Laws of 2018, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2018 amendment (ch. 327) extended the date of the repealer for §§ 47-5-701 through 47-5-729 by substituting "July 1, 2020" for "July 1, 2018."

The second 2018 amendment (ch. 406) extended the date of the repealer for §§ 47-5-701 through 47-5-729 by substituting "July 1, 2022" for "July 1, 2018."

## ADMINISTRATIVE REVIEW PROCEDURE

### § 47-5-801. Authority to adopt administrative review procedure.

#### JUDICIAL DECISIONS

**1. Administrative review procedures.**

Inmate's statutory due-process rights were not violated because the inmate did not present any evidence to refute the finding of the Mississippi Department of Corrections that he made a threatening statement to another inmate, and the inmate was present at the hearing, acknowledged the allegations, and admitted the rule violation; the inmate did not request the presence of witnesses or ask to present evidence prior to his disciplinary hearing. State v. Stafford, 237 So. 3d 1280, 2018 Miss. App. LEXIS 74 (Miss. Ct. App. 2018).

Remanding to the circuit court for further review would serve no purpose and would be judicially inefficient since an inmate's claim that he was denied statutory due process had no realistic chance of success; the inmate did not request or retain counsel, nor did he request that witnesses or evidence be presented at his disciplinary hearing, and the inmate admitted that he made a threatening statement to another inmate. State v. Stafford, 237 So. 3d 1280, 2018 Miss. App. LEXIS 74 (Miss. Ct. App. 2018).

## § 47-5-803. Procedure constitutes administrative remedies available to offenders for purpose of preserving cause of action against state.

### JUDICIAL DECISIONS

**1. In general.**

Circuit court erred in dismissing an inmate's complaint for judicial review of a loss of privileges due to a rule violation report because the inmate exhausted his administrative remedies and sought judicial review within thirty days of receipt of the final decision of the Mississippi Department of Corrections; although the circuit court was presented with an incomplete record due to the inmate's failure to file certain documentation, such failure did not preclude reversal. Willis v. Westley, 243 So. 3d 805, 2018 Miss. App. LEXIS 171 (Miss. Ct. App. 2018), overruled in part, Jobe v. State, 288 So. 3d 403, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. 2019).

Parole eligibility did not clearly fall under the purview of administrative-review procedure. Therefore, the appellate court, in determining whether the Mississippi Department of Corrections correctly computed the date of an inmate's parole eligibility, followed the rule that inmates could, but were not required to, use the administrative-review procedure as a way of challenging parole eligibility. Brown v. State, 230 So. 3d 1069, 2017 Miss. App. LEXIS 156 (Miss. Ct. App. 2017).

## § 47-5-807. Judicial review of agency decision.

### JUDICIAL DECISIONS

#### ANALYSIS

2. Time for filing.
3. Right to judicial review.
4. Mailbox rule.
5. Appeal dismissed.
6. Service of process.

**2. Time for filing.**

When an inmate contested the Mississippi Department of Corrections' (MDOC) revocation of most of inmate's accrued trusty-time credit, the inmate's complaint was properly dismissed because (1) the complaint had to be filed within 30 days of MDOC's decision, and, (2) while MDOC did not prove it was filed more than 30 days after receiving MDOC's decision dismissing the inmate's administrative complaint contesting revocation of trusty-time credit, the record showed the inmate did not contest the original decision revoking trusty-time credit within 30 days. King v. McCarty, 196 So. 3d 175, 2016 Miss. App. LEXIS 405 (Miss. Ct. App. 2016).

**3. Right to judicial review.**

Circuit court erred in dismissing an inmate's complaint for judicial review of a loss of privileges due to a rule violation report because the inmate exhausted his administrative remedies and sought judicial review within thirty days of receipt of the final decision of the Mississippi Department of Corrections; although the circuit court was presented with an incomplete record due to the inmate's failure to file certain documentation, such failure did not preclude reversal. Willis v. Westley, 243 So. 3d 805, 2018 Miss. App. LEXIS 171 (Miss. Ct. App. 2018), overruled in part, Jobe v. State, 288 So. 3d 403, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. 2019).

**4. Mailbox rule.**

Inmate sought his judicial review within the thirty days required by the statute, and the circuit court had jurisdiction to consider it, because the inmate dropped his motion for judicial review in the prison mailbox within the thirty-day appeal deadline. Jobe v. State, 288 So. 3d 403, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. 2019).

**5. Appeal dismissed.**

Because an inmate had been released on parole since the filing of his appeal of an order requiring Rule Violation Reports (RVRs) be expunged from his prison record, the issues were moot, and his appeal was dismissed; review of the circuit court's finding on whether substantial evidence existed to support the inmate's two individual RVRs, which only subjected the inmate to reclassification and loss of privileges, was not a matter of "public interest." State v. Runnels, 281 So. 3d 148, 2019 Miss. App. LEXIS 76 (Miss. Ct. App. 2019)

Because an inmate had been released on parole since the filing of his appeal of an order requiring Rule Violation Reports (RVRs) be expunged from his prison record, the issues were moot, and his appeal was dismissed; the inmate completed his punishment and fully litigated the issuance of the RVRs, and thus, there was no reasonable expectation that he could be subject to the same action RVR in the future. State v. Runnels, 281 So. 3d 148, 2019 Miss. App. LEXIS 76 (Miss. Ct. App. 2019).

**6. Service of process.**

Inmate's petition for review was governed by Miss. Unif. Cir. & Cty. R. 5.04 and not Miss. R. Civ. P. 4 because the petition for Administrative Remedy Program review was not a "regular civil filing" that required service of process under the rules of civil procedure; no service of process was required, and thus, the circuit court had personal jurisdiction over the Mississippi Department of Corrections to hear the inmate's petition for review of his request for treatment. Jobe v. State, 288 So. 3d 403, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. 2019).

## STATE OFFENDERS SERVING SENTENCES IN COUNTY JAILS

Sec.

47-5-901. Service of sentence in county jail if space unavailable in state facility or upon request of sheriff or president of board of supervisors; reimbursement of costs; governmental liability [Repealed effective July 1, 2024].

47-5-911. Repeal of Sections 47-5-901 through 47-5-911 [Effective until July 1, 2024].

### § 47-5-901. Service of sentence in county jail if space unavailable in state facility or upon request of sheriff or president of board of supervisors; reimbursement of costs; governmental liability [Repealed effective July 1, 2024].

(1)(a) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(b) Any person committed, sentenced or otherwise placed under the

custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his or her sentence in the county jail of the county wherein such person was convicted if the sheriff or president of the board of supervisors, requests such inmate or inmates. Upon such request, the department may allow such inmate or inmates to serve all or any part of such inmate's or inmates' sentence(s), as the case may be, in the county of conviction of the inmate or inmates. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. Whenever a request is denied for an inmate or inmates, then the commissioner shall certify in writing to the sentencing court, sheriff, or president of the board of supervisors of a county, as the case may be, that such inmate or inmates does not qualify to serve the sentence or sentences in the county jail. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(2) If state prisoners are housed in county jails due to a lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner. In order to maximize the potential use of county jail space, the Department of Corrections is encouraged to negotiate a reasonable per day cost per prisoner, which in no event may exceed Twenty Dollars ($20.00) per day per offender.

(3)(a) Upon vouchers submitted by the board of supervisors of any county housing persons due to lack of space at state institutions, the Department of Corrections shall pay to such county, out of any available funds, the actual cost of food, or contract price per prisoner, not to exceed Twenty Dollars ($20.00) per day per offender, as determined under subsection (2) of this section for each day an offender is so confined beginning the day that the Department of Corrections receives a certified copy of the sentencing order and will terminate on the date on which the offender is released or otherwise removed from the custody of the county jail. The department, or its contracted medical provider, will pay to a provider of a medical service for any and all incarcerated persons from a correctional or detention facility an amount based upon negotiated fees as agreed to by the medical care service providers and the department and/or its contracted medical provider. In the absence of negotiated discounted fee schedule, medical care service providers will be paid by the department, or its contracted medical service provider, an amount no greater than the reimbursement rate applicable based on the Mississippi Medicaid reimbursement rate. The board of supervisors of any county shall not be liable for any cost associated with medical attention for prisoners who are pretrial detainees or for prisoners who have been convicted that exceeds the Mississippi Medicaid reimbursement rate or the reimbursement provided by the Department of Corrections, whichever is greater. This limitation applies to all medical care services, durable and nondurable goods, prescription drugs and medications. Such payment shall

be placed in the county general fund and shall be expended only for food and medical attention for such persons.

(b) Upon vouchers submitted by the board of supervisors of any county housing offenders in county jails pending a probation or parole revocation hearing, the department shall pay the reimbursement costs provided in paragraph (a).

(c) If the probation or parole of an offender is revoked, the additional cost of housing the offender pending the revocation hearing shall be assessed as part of the offender's court cost and shall be remitted to the department.

(4) A person, on order of the sentencing court, may serve not more than twenty-four (24) months of his sentence in a county jail if the person is classified in accordance with Section 47-5-905 and the county jail is an approved county jail for housing state inmates under federal court order. The sheriff of the county shall have the right to petition the Commissioner of Corrections to remove the inmate from the county jail. The county shall be reimbursed in accordance with subsection (2) of this section.

(5) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

(7) An offender returned to a county for post-conviction proceedings shall be subject to the provisions of Section 99-19-42 and the county shall not receive the per-day allotment for such offender after the time prescribed for returning the offender to the Department of Corrections as provided in Section 99-19-42.

**HISTORY: Laws, 1992, ch. 547, § 1; Laws, 1994 Ex Sess, ch. 26, § 16; Laws, 1995, ch. 566, § 2; reenacted without change, Laws, 1997, ch. 408, § 1; reenacted without change, Laws, 1998, ch. 419, § 1; reenacted without change, Laws, 2002, ch. 426, § 1; Laws, 2002, ch. 624, § 4; reenacted without change, Laws, 2003, ch. 421, § 1; reenacted and amended, Laws, 2004, ch. 537, § 1; reenacted without change, Laws, 2005, ch. 395, § 1; reenacted and amended, Laws, 2007, ch. 603, § 1; reenacted without change, Laws, 2008, ch. 323, § 1; Laws, 2010, ch. 490, § 1; reenacted without change, Laws, 2012, ch. 317, § 1; Laws, 2014, ch. 457, § 59; reenacted without change, Laws, 2016, ch. 408, § 1, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 456, § 1, eff from and after July 1, 2020; reenacted and amended, Laws, 2020, ch. 485, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 1 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this

section without change. Section 1 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), reenacted and amended this section. As set out above, this section reflects the language of Section 1 of Chapter 485, Laws of 2020, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

**Amendment Notes —** The 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted and amended the section by adding (1)(b).

## § 47-5-903. Other conditions under which sentence may be served in county jail; governmental liability [Repealed effective July 1, 2024].

**HISTORY: Laws, 1992, ch. 547, § 2; reenacted without change, Laws, 1997, ch. 408, § 2; reenacted without change, Laws, 1998, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 538, § 2; reenacted without change, Laws, 2002, ch. 426, § 2; reenacted without change, Laws, 2003, ch. 421, § 2; reenacted without change, Laws, 2004, ch. 537, § 2; reenacted without change, Laws, 2005, ch. 395, § 2; reenacted without change, Laws, 2007, ch. 603, § 2; reenacted without change, Laws, 2008, ch. 323, § 2; reenacted without change Laws, 2012, ch. 317, § 2; reenacted without change, Laws, 2016, ch. 408, § 2, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 456, § 2, eff from and after July 1, 2020; reenacted without change, Laws, 2020, ch. 485, § 2, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 2 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this section without change. Section 2 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), also reenacted the section without change. The reenactment of the section without change by Section 2 of Chapter 485, Laws of 2020, is controlling pursuant to Section 1-3-79, which provides that whenever the same section of law is amended or reenacted by different bills during the same legislative session, and the effective date and the approval date of the amendments or reenactment are the same, the amendment or reenactment with the latest approval time supersedes all other amendments or reenactments to the same section approved on an earlier date and time.

**Editor's Notes —** This section was reenacted without change by Laws of 2020, ch. 456, § 2, and Laws of 2020, ch. 485, § 2. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted the section without change.

## § 47-5-905. Processing and classification of inmates [Repealed effective July 1, 2024].

**HISTORY: Laws, 1992, ch. 547, § 3; reenacted without change, Laws, 1997, ch. 408, § 3; reenacted without change, Laws, 1998, ch. 419, § 3; reenacted without**

**change, Laws, 1999, ch. 538, § 3; reenacted without change, Laws, 2002, ch. 426, § 3; reenacted without change, Laws, 2003, ch. 421, § 3; reenacted without change, Laws, 2004, ch. 537, § 3; reenacted without change, Laws, 2005, ch. 395, § 3; reenacted without change, Laws, 2007, ch. 603, § 3; reenacted without change, Laws, 2008, ch. 323, § 3; reenacted without change, Laws, 2012, ch. 317, § 3; reenacted without change, Laws, 2016, ch. 408, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 456, § 3, eff from and after July 1, 2020; reenacted without change, Laws, 2020, ch. 485, § 3, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 3 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this section without change. Section 3 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), also reenacted the section without change. The reenactment of the section without change by Section 3 of Chapter 485, Laws of 2020, is controlling pursuant to Section 1-3-79, which provides that whenever the same section of law is amended or reenacted by different bills during the same legislative session, and the effective date and the approval date of the amendments or reenactment are the same, the amendment or reenactment with the latest approval time supersedes all other amendments or reenactments to the same section approved on an earlier date and time.

**Editor's Notes —** This section was reenacted without change by Laws of 2020, ch. 456 § 3, and Laws of 2020, ch. 485, § 3. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted the section without change.

## § 47-5-907. Removal of state inmate from county jail; petition; grounds; immunity from liability [Repealed effective July 1, 2024].

**HISTORY: Laws, 1992, ch. 547, § 4; reenacted without change, Laws, 1997, ch. 408, § 4; reenacted without change, Laws, 1998, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 538, § 4; reenacted without change, Laws, 2002, ch. 426, § 4; reenacted without change, Laws, 2003, ch. 421, § 4; reenacted without change, Laws, 2004, ch. 537, § 4; reenacted without change, Laws, 2005, ch. 395, § 4; reenacted without change, Laws, 2007, ch. 603, § 4; reenacted without change, Laws, 2008, ch. 323, § 4; reenacted without change, Laws, 2012, ch. 317, § 4; Laws, 2016, ch. 408, § 4, eff from and after July 1, 2016; reenacted by Laws, 2020, ch. 456, § 4, eff from and after July 1, 2020; Laws, 2020, ch. 485, reenacted without change, Laws, 2020, ch. 485, § 4, eff from and after July 1, 2020, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 4 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this section without change. Section 4 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), also reenacted the section without change. The reenactment of the section without change by Section 4 of Chapter 485, Laws of 2020, is controlling pursuant to Section 1-3-79, which provides that whenever the same section of law is amended or reenacted by different bills during the same legislative session, and the effective date and the approval date of the amendments or reenactment are the same, the amendment or reenactment with the latest approval

time supersedes all other amendments or reenactments to the same section approved on an earlier date and time.

**Editor's Notes —** This section was reenacted without change by Laws of 2020, ch. 456 § 4, and Laws of 2020, ch. 485, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted the section without change.

## § 47-5-909. Incarceration in county jails as temporary measure only [Repealed effective July 1, 2024].

**HISTORY: Laws, 1992, ch. 547, § 5; reenacted without change, Laws, 1997, ch. 408, § 5; reenacted without change, Laws, 1998, ch. 419, § 5; reenacted without change, Laws, 1999, ch. 538, § 5; reenacted without change, Laws, 2002, ch. 426, § 5; reenacted without change, Laws, 2003, ch. 421, § 5; reenacted without change, Laws, 2004, ch. 537, § 5; reenacted without change, Laws, 2005, ch. 395, § 5; reenacted without change, Laws, 2007, ch. 603, § 5; reenacted without change, Laws, 2008, ch. 323, § 5; reenacted without change, Laws, 2012, ch. 317, § 5; reenacted without change, Laws, 2016, ch. 408, § 5, eff from and after July 1, 2016; reenacted by Laws, 2020, ch. 456, § 5, eff from and after July 1, 2020; Laws, 2020, ch. 485, reenacted without change, Laws, 2020, ch. 485, § 5, eff from and after July 1, 2020, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 5 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this section without change. Section 5 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), also reenacted the section without change. The reenactment of the section without change by Section 5 of Chapter 485, Laws of 2020, is controlling pursuant to Section 1-3-79, which provides that whenever the same section of law is amended or reenacted by different bills during the same legislative session, and the effective date and the approval date of the amendments or reenactment are the same, the amendment or reenactment with the latest approval time supersedes all other amendments or reenactments to the same section approved on an earlier date and time.

**Editor's Notes —** This section was reenacted without change by Laws of 2020, ch. 456 § 5, and Laws of 2020, ch. 485, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes —** 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted the section without change.

## § 47-5-911. Repeal of Sections 47-5-901 through 47-5-911 [Effective until July 1, 2024].

Sections 47-5-901 through 47-5-911 shall stand repealed on July 1, 2024.

**HISTORY: Laws, 1992, ch. 547, § 6; Laws, 1994, ch. 311, § 1; Laws, 1995, ch. 418, § 1; Laws, 1997, ch. 408, § 6; Laws, 1998, ch. 419, § 6; Laws, 1999, ch. 538, § 6; Laws, 2001, ch. 364, § 1; Laws, 2003, ch. 421, § 6; Laws, 2004, ch. 537, § 6; Laws, 2005, ch. 395, § 6; Laws, 2007, ch. 354, § 1; Laws, 2007, ch. 603, § 6; Laws, 2008, ch. 323, § 6; reenacted and amended Laws, 2012, ch. 317, § 6; Laws, 2014,**

**ch. 457, § 60; Laws, 2016, ch. 408, § 6, eff from and after July 1, 2016; Laws, 2020, ch. 456, § 6, eff from and after July 1, 2020; Laws, 2020, ch. 485, § 6, eff from and after July 1, 2020.**

**Joint Legislative Committee Note** — Section 6 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), amended this section. Section 6 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), also amended the section. As set out above, this section reflects the language of Section 6 of Chapter 485, Laws of 2020, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

**Amendment Notes** — The 2016 amendment extended the date of the repealer for §§ 47-5-901 through 47-5-911 by substituting "July 1, 2020" for "July 1, 2016."

The first 2020 amendment (ch. 456) extended the date of the repealer for §§ 47-5-901 through 47-5-911 by substituting "July 1, 2024" for "July 1, 2020."

The second 2020 amendment (ch. 485) extended the date of the repealer for §§ 47-5-901 through 47-5-911 by substituting "July 1, 2024" for "July 1, 2020."

## INCARCERATION OF STATE OFFENDERS IN COUNTY OWNED OR LEASED CORRECTIONAL FACILITIES

Sec.

47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.
47-5-933. Contracts for incarceration of state offenders in county facilities; medical care.
47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2022].

### § 47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.

(1) The Department of Corrections, in its discretion, may contract with the board of supervisors of one or more counties or with a regional facility operated by one or more counties, to provide for housing, care and control of offenders who are in the custody of the State of Mississippi. Any facility owned or leased by a county or counties for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of Mississippi, and with all court orders that may now or hereinafter be applicable to the facility. If the Department of Corrections contracts with more than one (1) county to house state offenders in county correctional facilities, excluding a regional facility, then the first of such facilities shall be constructed in Sharkey County and the second of such facilities shall be constructed in Jefferson County.

(2) The Department of Corrections shall contract with the board of supervisors of the following counties to house state inmates in regional

facilities: (a) Marion and Walthall Counties; (b) Carroll and Montgomery Counties; (c) Stone and Pearl River Counties; (d) Winston and Choctaw Counties; (e) Kemper and Neshoba Counties; (f) Alcorn County and any contiguous county in which there is located an unapproved jail; (g) Yazoo County and any contiguous county in which there is located an unapproved jail; (h) Chickasaw County and any contiguous county in which there is located an unapproved jail; (i) George and Greene Counties and any contiguous county in which there is located an unapproved jail; (j) Washington County and any contiguous county in which there is located an unapproved jail; (k) Hinds County and any contiguous county in which there is located an unapproved jail; (*l*) Leake County and any contiguous county in which there is located an unapproved jail; (m) Issaquena County and any contiguous county in which there is located an unapproved jail; (n) Jefferson County and any contiguous county in which there is located an unapproved jail; (o) Franklin County and any contiguous county in which there is located an unapproved jail; (p) Holmes County and any contiguous county in which there is located an unapproved jail; and (q) Bolivar County and any contiguous county in which there is located an unapproved jail. The Department of Corrections shall decide the order of priority of the counties listed in this subsection with which it will contract for the housing of state inmates. For the purposes of this subsection, the term "unapproved jail" means any jail that the local grand jury determines should be condemned or has found to be of substandard condition or in need of substantial repair or reconstruction.

(3) In addition to the offenders authorized to be housed under subsection (1) of this section, the Department of Corrections may contract with any regional facility to provide for housing, care and control of not more than seventy-five (75) additional offenders who are in the custody of the State of Mississippi.

(4) The Governor and the Commissioner of Corrections are authorized to increase administratively the number of offenders who are in the custody of the State of Mississippi that can be placed in regional correctional facilities.

**HISTORY: Laws, 1995, ch. 585, § 1; Laws, 1997, ch. 457, § 1; Laws, 1999, ch. 526, § 1; Laws, 2004, ch. 472, § 1; Laws, 2007, ch. 539, § 1; Laws, 2013, ch. 422, § 1; Laws, 2014, ch. 321, § 1, eff from and after passage (approved Mar. 25, 2014.); Laws, 2020, ch. 464, § 1, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment, in (2), rewrote the former first and second sentences, which read: "The Department of Corrections shall contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Marion and Walthall Counties; (b) Carroll and Montgomery Counties; (c) Stone and Pearl River Counties; (d) Winston and Choctaw Counties; (e) Kemper and Neshoba Counties; (f) Holmes County and any contiguous county in which there is located an unapproved jail; and (g) Bolivar County and any contiguous county in which there is located an unapproved jail. The Department of Corrections may contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Yazoo County, (b) Chickasaw County, (c) George and Greene Counties, (d) Washington County, (e) Hinds County, and (f) Alcorn County" and combined them into the present first sentence; in (3), substituted (any regional facility" for "the Kemper and Neshoba regional facility"; and added (4).

## § 47-5-933. Contracts for incarceration of state offenders in county facilities; medical care.

The Department of Corrections may contract for the purposes set out in Section 47-5-931 for a period of not more than twenty (20) years. The contract may provide that the Department of Corrections pay a fee of no more than Thirty-one Dollars ($31.00) per day for each offender that is housed in the facility. The Department of Corrections may include in the contract, as an inflation factor, a three percent (3%) annual increase in the contract price. The state shall retain responsibility for medical care for state offenders to the extent that is required by law; provided, however, the department may reimburse each facility for contract medical services as provided by law in an amount not to exceed Six Dollars and Twenty-five Cents ($6.25) per day per offender.

**HISTORY: Laws, 1995, ch. 585, § 2; Laws, 2007, ch. 539, § 2, eff from and after July 1, 2007; Laws, 2020, ch. 464, § 2, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment substituted "no more than Thirty-one Dollars ($31.00)" for "up to Twenty-nine Dollars and Seventy-four Cents ($29.74)"; and added the proviso at the end of the section.

## § 47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2022].

(1)(a) The Department of Corrections may contract with the Bolivar County Regional Facility for a five-year pilot program dedicated to an intensive and comprehensive alcohol and other drug treatment program for not more than two hundred fifty (250) inmates. The Bolivar County Regional Facility shall have the option of canceling the contract for the drug treatment program after giving the Department of Corrections thirty (30) days' notice of its intent to cancel. The program shall be a prison-based treatment program designed to reduce substance abuse by inmates, correct dysfunctional thinking and behavioral patterns, and prepare inmates to make a successful and crime-free readjustment to the community.

(b) The Department of Corrections shall reimburse the Bolivar County Regional Facility at the per diem rate allowed under Section 47-5-933.

(2)(a) An inmate who is within eighteen (18) months of his earned release date or parole date may be placed in the program.

(b) The Department of Corrections shall remove any inmate within seventy-two (72) hours after being notified by the Bolivar County Regional Facility that the inmate is violent or refuses to participate in the drug treatment program.

(3) The program shall consist, but is not limited to, the following components:

(a) An assessment and placement component using a recidivism needs assessment of the inmates.

(b) An intensive and comprehensive treatment and rehabilitation component which addresses the specific drug or alcohol problem of the inmate.

This component shall include relapse prevention strategies and anger management strategies.

(c) An aftercare post-release component that has a specific transition plan for each inmate. The transition plan must address specific post-release needs such as employment, housing, medical care, relapse prevention and treatment. The plan shall require personnel to assist the inmate with these needs and to assist in finding community-based programs for the inmate. The plan shall require the inmate to be tracked in at least thirty-day intervals to measure compliance with his established transition plan.

(d) A monitoring assessment of recidivism containing post-release history of substance abuse, breaches of trust, arrests, convictions, employment, community functioning, and marital and family interaction.

(4) The department shall file a report annually on the program with specific data on recidivism of inmates including the data required in subsection (3)(d).

(5) The program authorized under this section may be renewed if it meets performance requirements as may be determined by the Legislature.

(6) This section shall be repealed on July 3, 2022.

**HISTORY: Laws, 2002, ch. 617, § 13; Laws, 2007, ch. 534, § 1; Laws, 2009, ch. 504, § 1; reenacted and amended, Laws, 2012, ch. 393, § 1; Laws, 2015, ch. 318, § 1; Laws, 2015, ch. 463, § 3, eff from and after July 1, 2015; Laws, 2018, ch. 318, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 409, § 1, eff from and after July 1, 2018.**

**Joint Legislative Committee Note —** Section 1 of Chapter 318, Laws of 2018, effective from and after July 1, 2018 (approved March 7, 2018), amended this section. Section 1 of Chapter 409, Laws of 2018, effective from and after July 1, 2018 (approved March 21, 2018), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 409, Laws of 2018, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2018 amendment (ch. 318) extended the date of the repealer for the section by substituting "July 1, 2019" for "July 3, 2018" in (6).

The second 2018 amendment (ch. 409) extended the date of the repealer for the section by substituting "July 3, 2022" for "July 3, 2018" in (6).

## INTENSIVE SUPERVISION PROGRAM; ELECTRONIC HOME DETENTION

Sec.
47-5-1001. Definitions [Repealed effective after June 30, 2022].

## § 47-5-1001. Definitions [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 1; Laws, 1994, ch. 606, § 2; reenacted without change, Laws, 1999, ch. 539, § 1; reenacted without change, Laws, 2001, ch. 482, § 2; reenacted without change, Laws, 2003, ch. 418, § 1; reenacted without change, Laws, 2005, ch. 485, § 2; reenacted without change, Laws, 2006, ch. 392,**

**§ 1; reenacted without change, Laws, 2008, ch. 479, § 1; reenacted without change, Laws, 2012, ch. 316, § 1; reenacted without change, Laws, 2014, ch. 317, § 1, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 408, § 1, eff from and after June 30, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 408, § 1, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; provision of certain data to Oversight Task Force [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 2; Laws, 1994, ch. 606, § 3; Laws, 1994 Ex Sess, ch. 26, § 26; Laws, 1995, ch. 399, § 1; Laws, 1996, ch. 397, § 2; Laws, 1998, ch. 461, § 1; Laws, 2000, ch. 622, § 1; Laws, 2001, ch. 393, § 10; Laws, 2001, ch. 482, § 1; reenacted without change, Laws, 2003, ch. 418, § 2; reenacted without change, Laws, 2005, ch. 485, § 3; reenacted without change, Laws, 2006, ch. 392, § 2; Laws, 2008, ch. 313, § 1; reenacted, Laws, 2008, ch. 479, § 2; Laws, 2009, ch. 502, § 1; Laws, 2011, ch. 459, § 2; reenacted without change, Laws, 2012, ch. 316, § 2; reenacted without change, Laws, 2014, ch. 317, § 2; Laws, 2014, ch. 457, § 11, eff from and after July 1, 2014; reenacted without change, Laws, 2018, ch. 408, § 2, eff from and after June 30, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 408, § 2, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1005. Rules and guidelines for operation of intensive supervision program; approval and leasing of electronic monitoring devices [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 3; Laws, 2007, ch. 598, § 1; reenacted without change, Laws, 2008, ch. 479, § 3; reenacted without change, Laws, 2012, ch. 316, § 3; reenacted without change, Laws, 2014, ch. 317, § 3, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 408, § 3, eff from and after June 30, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 408, § 3, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1007. Payment of monthly fee by participant who is employed; payment of monthly fee by juvenile offender; special fund; responsibilities of participant; notice regarding violation of detention [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 4; reenacted without change, Laws, 1999, ch. 539, § 4; reenacted without change, Laws, 2001, ch. 482, § 4; reenacted without change, Laws, 2003, ch. 418, § 4; reenacted without change, Laws, 2005, ch. 485, § 5; reenacted without change, Laws, 2006, ch. 392, § 4; reenacted and amended, Laws, 2008, ch. 479, § 4; Laws, 2011, ch. 459, § 3; reenacted without change, Laws, 2012, ch. 316, § 4; reenacted without change, Laws, 2014, ch. 317, § 4; Laws, 2014, ch. 457, § 12, eff from and after July 1, 2014; reenacted without change, Laws, 2018, ch. 408, § 4, eff from and after June 30, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 408, § 4, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment, effective June 30, 2018, reenacted the section without change.

### JUDICIAL DECISIONS

**1. Escape.**

Defendant was properly convicted of escape because the Legislature made clear that an escape from house arrest was a felony escape and defendant was on "house arrest" under the jurisdiction of the Mississippi Department of Corrections in the Intensive Supervision Program when he cut his monitoring device off his ankle and fled. Smith v. State, 270 So. 3d 1052, 2018 Miss. App. LEXIS 502 (Miss. Ct. App. 2018).

## § 47-5-1009. Immunity of department; audit [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 5; reenacted without change, Laws, 1999, ch. 539, § 5; reenacted without change, Laws, 2001, ch. 482, § 5; reenacted without change, Laws, 2003, ch. 418, § 5; reenacted without change, Laws, 2005, ch. 485, § 6; reenacted without change, Laws, 2006, ch. 392, § 5; reenacted without change, Laws, 2008, ch. 479, § 5; reenacted without change, Laws, 2012, ch. 316, § 5; reenacted without change, Laws, 2014, ch. 317, § 5, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 408, § 5, eff from and after June 30, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 408, § 5, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1011. Prior notification of participant and co-residents regarding nature and extent of electronic monitoring devices; damage to equipment; noncriminal environment to be maintained [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 6; Laws, 1994, ch. 606, § 4; reenacted without change, Laws, 1999, ch. 539, § 6; reenacted without change, Laws, 2001, ch. 482, § 6; reenacted without change, Laws, 2003, ch. 418, § 6; reenacted without change, Laws, 2005, ch. 485, § 7; reenacted without change, Laws, 2006, ch. 392, § 6; reenacted without change, Laws, 2008, ch. 479, § 6; reenacted without change, Laws, 2012, ch. 316, § 6; reenacted without change, Laws, 2014, ch. 317, § 6, eff from and after passage (approved Mar. 12, 2014); reenacted without changed, Laws, 2018, ch. 408, § 6, eff from and after June 30, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 408, § 6, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1013. Conditions for participation in intensive supervision program [Repealed effective after June 30, 2022].

**HISTORY: Laws, 1993, ch. 576, § 7; reenacted without change, Laws, 1999, ch. 539, § 7; reenacted without change, Laws, 2001, ch. 482, § 7; reenacted without change, Laws, 2003, ch. 418, § 7; reenacted and amended, Laws, 2005, ch. 485, § 8; reenacted without change, Laws, 2006, ch. 392, § 7; reenacted and amended, Laws, 2008, ch. 479, § 7; Laws, 2010, ch. 492, § 1; Laws, 2011, ch. 459, § 4; reenacted without change, Laws, 2012, ch. 316, § 7; reenacted without change, Laws, 2014, ch. 317, § 7, eff from and after passage (approved Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 408, § 7, eff from and after June 30, 2018.**

**Editor's Notes —** This section was reenacted without change by Laws of 2018, ch. 408, § 7, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1014. Monthly supervision fee for those participating in program since July 1, 2004 [Repealed effective after June 30, 2022].

**HISTORY: Laws, 2005, ch. 485, § 10; reenacted without change, Laws, 2008, ch. 479, § 8; reenacted without change, Laws, 2012, ch. 316, § 8; reenacted without change, Laws, 2014, ch. 317, § 8, eff from and after passage (approved**

**Mar. 12, 2014); reenacted without change, Laws, 2018, ch. 408, § 8, eff from and after June 30, 2018.**

**Editor's Notes** — This section was reenacted without change by Laws of 2018, ch. 408, § 8, effective from and after June 30, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2018 amendment, effective June 30, 2018, reenacted the section without change.

## § 47-5-1015. Repeal of §§ 47-5-1001 through 47-5-1015 [Repealed effective after June 30, 2022].

Sections 47-5-1001 through 47-5-1015 shall stand repealed after June 30, 2022.

**HISTORY: Laws, 1993, ch. 576, § 8; Laws, 1995, ch. 399, § 2; Laws, 1999, ch. 539, § 8; Laws, 2001, ch. 482, § 8; reenacted and amended, Laws, 2003, ch. 418, § 8; reenacted and amended, Laws, 2005, ch. 485, § 9; Laws, 2006, ch. 392, § 8; Laws, 2008, ch. 479, § 9; reenacted and amended, Laws, 2012, ch. 316, § 9; reenacted and amended, Laws, 2014, ch. 317, § 9, eff from and after passage (approved Mar. 12, 2014); Laws, 2018, ch. 325, § 1, eff from and after June 30, 2018; Laws, 2018, ch. 408, § 9, eff from and after June 30, 2018.**

**Joint Legislative Committee Note** — Section 1 of Chapter 325, Laws of 2018, effective from and after June 30, 2018 (approved March 7, 2018), amended this section. Section 9 of Chapter 408, Laws of 2018, effective from and after June 30, 2018 (approved March 21, 2018), also amended this section. As set out above, this section reflects the language of Section 9 of Chapter 408, Laws of 2018, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes** — The first 2018 amendment (ch. 325), effective June 30, 2018, extended the date of the repealer for §§ 47-5-1001 through 47-5-1015 by substituting "June 30, 2020" for "June 30, 2018."

The second 2018 amendment (ch. 408), effective June 30, 2018, extended the date of the repealer for §§ 47-5-1001 through 47-5-1014 by substituting "June 30, 2022" for "June 30, 2018."

# CHAPTER 7.

# PROBATION AND PAROLE

Probation and Parole Law. ..... 47-7-1

## PROBATION AND PAROLE LAW

Sec.

47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.

Sec.
47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2022].
47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.
47-7-36. Persons who supervise individuals placed on parole or probation shall set times and locations for required meetings that reasonably accommodate the work schedules of those individuals.
47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.
47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.

## § 47-7-2. Definitions.

### JUDICIAL DECISIONS

**2. Technical violation.**

Circuit court did not err in summarily dismissing appellant's post-conviction-relief motion because its decision to impose a period of imprisonment greater than ninety days was not clearly erroneous since appellant committed at least three technical violations of his post-release supervision. Edmonson v. State, 238 So. 3d 1218, 2018 Miss. App. LEXIS 101 (Miss. Ct. App. 2018).

## § 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c)(i) No person shall be eligible for parole who shall, on or after

January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in this subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, except enhanced penalties for the crime of possession of a controlled substance under Section 41-29-147, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, including an offender who receives an enhanced penalty under the provisions of Section 41-29-147 for such possession, shall be eligible for parole. An offender incarcerated for committing the crime of sale or manufacture of a controlled substance shall be eligible for parole after serving one-fourth (1/4)

of the sentence imposed by the trial court. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g)(i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth (1/4) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in subparagraph (i) of this paragraph (g), a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this subparagraph (ii) of this paragraph (g) if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;

2. The inmate is sentenced for a crime of violence under Section 97-3-2;

3. The inmate is sentenced for an offense that specifically prohibits parole release;

4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);

5. The inmate is sentenced for a sex crime; or

6. The inmate has not served one-fourth (1/4) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph (a) of this subsection, any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the parole board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration; or if that senior circuit judge must be recused, another circuit judge of the same district or a senior status judge may hear and decide the matter;

(h) Notwithstanding any other provision of law, an inmate who has not been convicted as a habitual offender under Sections 99-19-81 through 99-19-87, has not been convicted of committing a crime of violence, as defined under Section 97-3-2, has not been convicted of a sex crime or any other crime that specifically prohibits parole release, and has not been convicted of drug trafficking under Section 41-29-139 is eligible for parole if the inmate has served twenty-five percent (25%) or more of his or her sentence, but is otherwise ineligible for parole.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-fourth (1/4) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job training program that is part of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

**HISTORY: Codes, 1942, § 4004-03; Laws, 1944, ch. 334, § 2; Laws, 1946, ch. 486, § 2; Laws, 1950, ch. 524, § 4; Laws, 1958, ch. 233, § 2; Laws, 1964, ch. 366; Laws, 1976, ch. 440, § 79; Laws, 1976, ch. 470, § 5; Laws, 1980, ch. 511; reenacted, Laws, 1981, ch. 465, § 92; Laws, 1982, ch. 431, § 1; reenacted, Laws, 1984, ch. 471, § 102; Laws, 1985, ch. 499, § 16; Laws, 1985, ch. 531, § 3; reenacted and amended, Laws, 1986, ch. 413, § 102; Laws, 1986, ch. 435, § 1; Laws, 1989, 1st Ex Sess, ch. 3, § 4; Laws, 1993, ch. 443, § 1; Laws, 1994, ch. 566, § 2; Laws, 1994 Ex Sess, ch. 25, § 5; Laws, 1995, ch. 575, § 2; Laws, 1995, ch. 596, § 3; Laws, 2001, ch. 393, § 11; Laws, 2002, ch. 413, § 1; Laws, 2004, ch. 407, § 1; Laws, 2004, ch. 520, § 1; Laws, 2004, ch. 569, § 1; Laws, 2005, ch. 503, § 1; Laws, 2008, ch. 438, § 1; Laws, 2010, ch. 536, § 4; Laws, 2014, ch. 457, § 40; Laws, 2015, ch. 448, § 1; Laws, 2016, ch. 506, § 1, eff from and after passage (approved May 13, 2016); Laws, 2018, ch. 416, § 5, eff from and after July 1, 2018; Laws, 2020, ch. 467, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an internal reference in subsection (1)(g)(ii) by substituting "subparagraph (i) of this paragraph (g)" for "paragraph (i) of this subsection." The Joint Committee ratified the correction at the August 14, 2018, meeting of the Committee.

**Amendment Notes —** The 2018 amendment, in (1)(f), inserted the exception in the third sentence and inserted "including an offender who receives an enhanced penalty under the provisions of Section 41-29-147 for such possession" in the fourth sentence; substituted "paragraph (a) of this subsection" for "paragraph (1)(a) of this section" in (1)(g)(iii); and added (1)(h).

The 2020 amendment, in (1), in (f), inserted "this" in the first sentence, in (g)(ii), substituted "this subparagraph (ii) of this paragraph (g)" for "this paragraph of this subsection," and in (g)(iii), added "or if that senior circuit judge...may hear and decide the matter" at the end.

## JUDICIAL DECISIONS

### ANALYSIS

2. Constitutionality.
4. Eligibility for earned good time.
5. Change in law, regulation, or interpretation; ex post facto effect.
8. Miscellaneous.
9. Ineffective assistance of counsel.

10. Sex offenders.
11. Resentencing.

**2. Constitutionality.**

Circuit judge's decision to sentence a juvenile offender to life imprisonment without eligibility for parole was neither arbitrary, nor an abuse of discretion because, at the hearing required by the case law, the judge, although the judge did not specifically discuss on the record each and every factor mentioned in the case law for the sentencing of a juvenile offender, expressly stated that the judge had considered each of the factors mentioned in the case law for the sentencing. Jones v. State, 285 So. 3d 626, 2017 Miss. App. LEXIS 684 (Miss. Ct. App. 2017), cert. dismissed, — So. 3d —, 2018 Miss. LEXIS 463 (Miss. 2018).

**4. Eligibility for earned good time.**

A prisoner was not permitted to earn good time credit during service of the mandatory portion of his period of confinement and then use that good time earned upon expiration of the mandatory portion of the sentence. Williams v. Puckett, 624 So. 2d 496, 1993 Miss. LEXIS 420 (Miss. 1993).

**5. Change in law, regulation, or interpretation; ex post facto effect.**

After finding that defendant's death sentence was unconstitutional, applying a sentence of life without parole violated the prohibition against ex post facto laws because, when defendant was sentenced, a life sentence carried parole eligibility after 10 years, and a sentence of life without parole obviously constricted defendant's opportunity to earn early release, and rendered the punishment for his crime more onerous than when he committed the crime; and applying the 1994 amendments to crimes committed prior to them clearly changed and increased the punishment attached to defendant's crime by adding life without eligibility for parole as an option. Blue v. State, — So. 3d —, 2020 Miss. LEXIS 369 (Miss. Oct. 8, 2020).

**8. Miscellaneous.**

Appellant failed to state a claim upon which the circuit court could assert jurisdiction because his case was not one of unlawful revocation of parole; appellant was never released on parole because the Mississippi Parole Board changed its decision and denied him parole. Cook v. State, 282 So. 3d 760, 2019 Miss. App. LEXIS 404 (Miss. Ct. App. 2019).

Trial court did not err by sentencing defendant to life without eligibility for parole because he was only 70 days short of his 18th birthday when he shot the victim, prior to the shooting he had already compiled an extensive youth court record, the threats defendant made to the victim prior to the shooting displayed premeditation, the victim was unarmed and attempting to run away when defendant shot him, and his youth court record failed to provide any positive factors or substantial hope of retaliation. Bass v. State, 273 So. 3d 768, 2018 Miss. App. LEXIS 631 (Miss. Ct. App. 2018), cert. denied, 272 So. 3d 130, 2019 Miss. LEXIS 238 (Miss. 2019).

Circuit judge erred in classifying defendant's offense as a "crime of violence" because the judge's finding that defendant used, attempted to use, or threatened to use physical force increased the minimum sentence that he had to serve and indisputably altered the prescribed range of sentences to which he was exposed, it eliminated defendant's eligibility for parole and made him ineligible for any type of early release until he had served at least half of his sentence, aggravated the punishment based on judicial fact-finding and Miss. Code Ann. § 97-3-2(2) violated defendant's rights under the Sixth and Fourteenth Amendments to the extent that it permitted the circuit judge to find that an unlisted felony was a "crime of violence." Fogleman v. State, 276 So. 3d 1213, 2018 Miss. App. LEXIS 460 (Miss. Ct. App. 2018), rev'd, 283 So. 3d 685, 2019 Miss. LEXIS 303 (Miss. 2019).

Relinquishment of the right to seek a conditional release from imprisonment that would emanate from the sentence for conviction of a charge that the defendant could have been convicted of, but was not, is not one of those constitutional rights that he is giving up, as a defendant has no constitutional right to seek a conditional release from any imprisonment, even when the imprisonment stems from a sen-

tence received as a result of a conviction by a jury or by a plea of guilty. Ware v. State, 258 So. 3d 315, 2018 Miss. App. LEXIS 420 (Miss. Ct. App. 2018).

**9. Ineffective assistance of counsel.**

Circuit court properly denied appellant's motion for post-conviction relief because cited no authority to support his argument that it constituted ineffective assistance of counsel for defense counsel to give appellant erroneous advice regarding, or not to inform him of, any potential conditional release he could or could not receive if he were convicted of the greater offense with which he was charged. Ware v. State, 258 So. 3d 315, 2018 Miss. App. LEXIS 420 (Miss. Ct. App. 2018).

Circuit court properly denied appellant's motion for post-conviction relief because he was not affirmatively misinformed regarding his parole eligibility, and thus, his guilty plea was not entered into voluntarily, intelligently, and knowingly. Ware v. State, 258 So. 3d 315, 2018 Miss. App. LEXIS 420 (Miss. Ct. App. 2018).

Since a defendant's attorney would not be required to advise the defendant of any potential conditional release from imprisonment if the defendant went to trial and was convicted of the charged offense, it seems quite logical that the defense counsel would not be required to give such advice when the defendant pleads guilty not to the offense charged, but to a lesser offense that happens to be included in the charged offense. Ware v. State, 258 So. 3d 315, 2018 Miss. App. LEXIS 420 (Miss. Ct. App. 2018).

Only information provided in appellant's mother's affidavit regarding what appellant's attorney said to appellant about his parole eligibility came from appellant himself; thus, the circuit court, which dismissed appellant's motion for post-conviction relief, did not err in its determination that appellant's mother had no firsthand knowledge of any statements made by appellant's attorney concerning the length of time appellant would have to serve. Moore v. State, 248 So. 3d 845, 2017 Miss. App. LEXIS 671 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 311 (Miss. 2018).

**10. Sex offenders.**

Mississippi Department of Corrections requiring defendant to serve his full, fifteen-year sentence, consistent with the statute, imposed by the circuit court, was not an extension or increase in defendant's sentence because the denial of any reduction to his sentence was not equivalent the Department "resentencing" him. Thomas v. Miss. Dep't of Corr., 248 So. 3d 786, 2018 Miss. LEXIS 129 (Miss. 2018).

Circuit court did not err in affirming the denial of defendant's claim that he was being improperly classified as a sex offender and was entitled to trusty time or meritorious earned time because defendant's conviction for kidnapping a minor under the age of sixteen made him ineligible for parole and ineligible for any reduction in his sentence. Thomas v. Miss. Dep't of Corr., 248 So. 3d 786, 2018 Miss. LEXIS 129 (Miss. 2018).

**11. Resentencing.**

It was not an abuse of discretion to resentence defendant, who was a juvenile when committing a homicide, to life without parole because the judge (1) appointed counsel, authorized funds for a mitigation specialist, and ordered a psychological assessment, and, (2) after conducting an evidentiary hearing at which the judge considered the Miller factors, substantial evidence supported the judge's findings that defendant was not entitled to a lesser sentence. Wells v. State, — So. 3d —, 2020 Miss. App. LEXIS 58 (Miss. Ct. App. Feb. 25, 2020).

Juvenile's sentence of life without parole after a Miller resentencing was not an abuse of discretion because the court considered characteristics and circumstances unique to juveniles, as Miller required, and, having satisfied the court's Miller obligation, did not abuse the court's discretion in denying relief from a previously imposed sentence of life without parole. Wharton v. State, 298 So. 3d 921, 2019 Miss. LEXIS 407 (Miss. 2019).

## § 47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2022].

(1) The State Parole Board, created under former Section 47-7-5, is hereby created, continued and reconstituted and shall be composed of five (5) members. The Governor shall appoint the members with the advice and consent of the Senate. All terms shall be at the will and pleasure of the Governor. Any vacancy shall be filled by the Governor, with the advice and consent of the Senate. The Governor shall appoint a chairman of the board.

(2) Any person who is appointed to serve on the board shall possess at least a bachelor's degree or a high school diploma and four (4) years' work experience. Each member shall devote his full time to the duties of his office and shall not engage in any other business or profession or hold any other public office. A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38. Each member shall keep such hours and workdays as required of full-time state employees under Section 25-1-98. Individuals shall be appointed to serve on the board without reference to their political affiliations. Each board member, including the chairman, may be reimbursed for actual and necessary expenses as authorized by Section 25-3-41. Each member of the board shall complete annual training developed based on guidance from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association. Each first-time appointee of the board shall, within sixty (60) days of appointment, or as soon as practical, complete training for first-time Parole Board members developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(3) The board shall have exclusive responsibility for the granting of parole as provided by Sections 47-7-3 and 47-7-17 and shall have exclusive authority for revocation of the same. The board shall have exclusive responsibility for investigating clemency recommendations upon request of the Governor.

(4) The board, its members and staff, shall be immune from civil liability for any official acts taken in good faith and in exercise of the board's legitimate governmental authority.

(5) The budget of the board shall be funded through a separate line item within the general appropriation bill for the support and maintenance of the department. Employees of the department which are employed by or assigned to the board shall work under the guidance and supervision of the board. There shall be an executive secretary to the board who shall be responsible for all administrative and general accounting duties related to the board. The executive secretary shall keep and preserve all records and papers pertaining to the board.

(6) The board shall have no authority or responsibility for supervision of offenders granted a release for any reason, including, but not limited to, probation, parole or executive clemency or other offenders requiring the same through interstate compact agreements. The supervision shall be provided exclusively by the staff of the Division of Community Corrections of the department.

(7)(a) The Parole Board is authorized to select and place offenders in an electronic monitoring program under the conditions and criteria imposed by the Parole Board. The conditions, restrictions and requirements of Section 47-7-17 and Sections 47-5-1001 through 47-5-1015 shall apply to the Parole Board and any offender placed in an electronic monitoring program by the Parole Board.

(b) Any offender placed in an electronic monitoring program under this subsection shall pay the program fee provided in Section 47-5-1013. The program fees shall be deposited in the special fund created in Section 47-5-1007.

(c) The department shall have absolute immunity from liability for any injury resulting from a determination by the Parole Board that an offender be placed in an electronic monitoring program.

(8)(a) The Parole Board shall maintain a central registry of paroled inmates. The Parole Board shall place the following information on the registry: name, address, photograph, crime for which paroled, the date of the end of parole or flat-time date and other information deemed necessary. The Parole Board shall immediately remove information on a parolee at the end of his parole or flat-time date.

(b) When a person is placed on parole, the Parole Board shall inform the parolee of the duty to report to the parole officer any change in address ten (10) days before changing address.

(c) The Parole Board shall utilize an Internet website or other electronic means to release or publish the information.

(d) Records maintained on the registry shall be open to law enforcement agencies and the public and shall be available no later than July 1, 2003.

(9) An affirmative vote of at least four (4) members of the Parole Board shall be required to grant parole to an inmate convicted of capital murder or a sex crime.

(10) This section shall stand repealed on July 1, 2022.

**HISTORY: Codes, 1942, § 4004-01; Laws, 1942, ch. 283; Laws, 1944, ch. 334, § 3; Laws, 1950, ch. 524, §§ 2, 3; Laws, 1956, ch. 262, § 2; Laws, 1960, ch. 272; Laws, 1968, ch. 362, § 1; Laws, 1976, ch. 440, § 80; Laws, 1978, ch. 520, § 13; Laws, 1980, ch. 560, § 21; reenacted, Laws, 1981, ch. 465, § 93; reenacted, Laws, 1984, ch. 471, § 103; reenacted, Laws, 1986, ch. 413, § 103; Laws, 1989, 1st Ex Sess, ch. 3, § 1; Laws, 1992, ch. 346, § 1; Laws, 1993, ch. 575, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 25, § 1; amended, Laws, 1995, ch. 596, § 1; Laws, 1997, ch. 602, § 2; Laws, 2000, ch. 612, § 1; Laws, 2002, ch. 560, § 1; Laws, 2004, ch. 569, § 2; Laws, 2005, ch. 485, § 1; Laws, 2006, ch. 570, § 1; Laws, 2007, ch. 597, § 1; Laws, 2009, ch. 513, § 1; Laws, 2012, ch. 320, § 1; Laws, 2014, ch. 457, § 52, eff from and after July 1, 2014; Laws, 2018, ch. 326, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 410, § 1, eff from and after July 1, 2018.**

**Joint Legislative Committee Note —** Section 1 of Chapter 326, Laws of 2018, effective from and after July 1, 2018 (approved March 7, 2018), amended this section. Section 1 of Chapter 410, Laws of 2018, effective from and after July 1, 2018 (approved March 21, 2018), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 410, Laws of 2018, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2018 amendment (ch. 326) extended the date of the repealer for the section by substituting "July 1, 2020" for "July 1, 2018" in (10).

The second 2018 amendment (ch. 410) extended the date of the repealer for the section by substituting "July 1, 2022" for "July 1, 2018" in (10).

## § 47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.

(1) The board may, at any time and upon a showing of probable violation of parole, issue a warrant for the return of any paroled offender to the custody of the department. The warrant shall authorize all persons named therein to return the paroled offender to actual custody of the department from which he was paroled.

(2) Any field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest by giving him a written statement setting forth that the offender has, in the judgment of that field supervisor, violated the conditions of his parole or earned-release supervision. The written statement delivered with the offender by the arresting officer to the official in charge of the department facility from which the offender was released or other place of detention designated by the department shall be sufficient warrant for the detention of the offender.

(3) The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. The field supervisor shall at once notify the board or department of the arrest and detention of the offender and shall submit a written report showing in what manner the offender has violated the conditions of parole or earned-release supervision. An offender for whose return a warrant has been issued by the board shall, after the issuance of the warrant, be deemed a fugitive from justice.

(4) Whenever an offender is arrested on a warrant for an alleged violation of parole as herein provided, the board shall hold an informal preliminary hearing within seventy-two (72) hours to determine whether there is reasonable cause to believe the person has violated a condition of parole. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically.

(5) The right of the State of Mississippi to extradite persons and return fugitives from justice, from other states to this state, shall not be impaired by this chapter and shall remain in full force and effect. An offender convicted of a felony committed while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the board. If an offender is on parole and the offender is convicted of a felony for a crime committed prior to the offender being placed on parole, whether in the State of Mississippi or another state, the offender may have his parole revoked upon presentment of a certified copy of the commitment order to the board.

(6)(a) The board shall hold a hearing for any parolee who is detained as a result of a warrant or a violation report within twenty-one (21) days of the parolee's admission to detention. The board may, in its discretion, terminate the parole or modify the terms and conditions thereof. If the board revokes parole for one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred and eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the board does not hold a hearing or does not take action on the violation within the twenty-one-day time frame in paragraph (a) of this subsection, the parolee shall be released from detention and shall return to parole status. The board may subsequently hold a hearing and may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) For a parolee charged with one or more technical violations who has not been detained awaiting the revocation hearing, the board may hold a hearing within a reasonable time. The board may revoke parole or may

continue parole and modify the terms and conditions of parole. If the board revokes parole for one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(7) Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the revocation hearing is not held within the thirty (30) days of the issuance of the warrant.

(8) The chairman and each member of the board and the designated parole revocation hearing officer may, in the discharge of their duties, administer oaths, summon and examine witnesses, and take other steps as may be necessary to ascertain the truth of any matter about which they have the right to inquire.

(9) The board shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of parole, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the board, the number of one-hundred-twenty-day sentences in a technical violation center issued by the board, the number of one-hundred-eighty-day sentences issued by the board, and the number and average length of the suspended sentences imposed by the board in response to a violation.

**HISTORY: Codes, 1942, § 4004-13; Laws, 1944, ch. 334, § 11; Laws, 1950, ch. 524, § 14; Laws, 1956, ch. 262, § 6; Laws, 1976, ch. 440, § 86; reenacted, Laws, 1981, ch. 465, § 103; reenacted, Laws, 1984, ch. 471, § 113; Laws, 1986, ch. 357, § 1; reenacted, Laws, 1986, ch. 413, § 113; Laws, 1989, ch. 306, § 1; Laws, 1995, ch. 596, § 7; Laws, 2010, ch. 470, § 1; Laws, 2012, ch. 488, § 1; Laws, 2014, ch. 457, § 56, eff from and after July 1, 2014; Laws, 2018, ch. 416, § 10, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment, in (6), substituted "one or more technical violations" for "a technical violation" near the beginning of the third sentences of (a) and (b) and in the first and third sentences of (c), and substituted "revocation" for "technical violation" everywhere it appears in (a) and (b) and in the third, fourth and fifth sentences of (c).

## § 47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.

### JUDICIAL DECISIONS

ANALYSIS

1. In general.
6. Propriety of particular sentences — Timeliness of petition for.
7. — Convicted felons.

**1. In general.**

Because appellant suffered no prejudice from an illegally lenient sentence, he could not reap the benefits of that sentence and claim in his motion for post-conviction relief to have been prejudiced as a result. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Trial court exceeded its authority by suspending all but twenty years of defendant's life sentence for first-degree murder because life imprisonment was the applicable sentence for first-degree murder; therefore, the trial court had no authority to suspend any part of defendant's life sentence. Shaheed v. State, 205 So. 3d 1105, 2016 Miss. App. LEXIS 806 (Miss. Ct. App. 2016)

**6. Propriety of particular sentences — Timeliness of petition for.**

**7. — Convicted felons.**

Defendant's sentence for being a felon in possession of a firearm was not illegal because he was sentenced after the applicable statute was amended to remove the portion that prohibited a convicted felon from being placed on probation, and the five-year-probation period was not part of defendant's actual prison sentence. Davis v. State, 199 So. 3d 701, 2016 Miss. App. LEXIS 528 (Miss. Ct. App. 2016).

## § 47-7-34. Postrelease supervision program.

### JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Revocation.

**1. In general.**

Circuit court did not err in denying appellant's motion for post-conviction relief because at the plea/sentencing hearing, the circuit court clearly informed appellant that he faced five additional years in Mississippi Department of Corrections custody if he violated the conditions of his post-release supervision. Stacks v. State, 240 So. 3d 516, 2018 Miss. App. LEXIS 132 (Miss. Ct. App. 2018).

Circuit court did not err in denying appellant's motion for post-conviction relief because it had the authority to sentence appellant to serve five years in Mississippi Department of Corrections custody after he violated multiple conditions of his post-release supervision (PSR); the statute does not require the circuit court to expressly suspend part of the defendant's sentence when the court imposes a term of PRS. Stacks v. State, 240 So. 3d 516, 2018 Miss. App. LEXIS 132 (Miss. Ct. App. 2018).

Circuit courts are encouraged to follow the customary practice to suspend a portion of the offender's sentence when imposing a term of post-release supervision (PRS); however, a technical deviation from this customary practice does not limit the circuit court's authority to terminate an offender's PRS and order him to be recommitted to Mississippi Department of Corrections custody if the offender violates the conditions of his or her PRS. Stacks v. State, 240 So. 3d 516, 2018 Miss. App. LEXIS 132 (Miss. Ct. App. 2018).

**2. Revocation.**

Appellant's motion for post-conviction

relief was properly denied because the trial court was not request to appoint counsel during the revocation hearing; the revocation hearing was straightforward, and the trial court instructed appellant that he could cross-examine witnesses, testify on his own behalf, and call any witnesses that he wanted. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

## § 47-7-36 Persons who supervise individuals placed on parole or probation shall set times and locations for required meetings that reasonably accommodate the work schedules of those individuals.

Any person who supervises an individual placed on parole by the Parole Board or placed on probation by the court shall set the times and locations for meetings that are required for parole or probation at such times and locations that are reasonably designed to accommodate the work schedule of an individual on parole or probation who is employed by another person or entity. To effectuate the provisions of this section, the parole officer or probation officer may utilize technology portals such as Skype, FaceTime or Google video chat, or any other technology portal that allows communication between the individual on parole or probation and the parole or probation officer, as applicable, to occur simultaneously in real time by voice and video in lieu of requiring a face-to-face in person meeting of such individual and the parole or probation officer, as applicable. For individuals who are self-employed, the provisions of this section shall only apply with the agreement of their supervising parole or probation officer.

**HISTORY: Laws, 2018, ch. 416, § 6, eff from and after July 1, 2018.**

## § 47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.

(1) The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation may be fixed and/or extended by the court for so long as the duty to support such minor children exists. The time served on probation or post-release supervision may be reduced pursuant to Section 47-7-40.

(2) At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving him a

written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.

(4) If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family ties, length of residence in the community, employment history and mental condition; the offender or probationer's history and conduct during the probation or other supervised release and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

(5)(a) The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence. If the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the

court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the offender is not detained as a result of the warrant, the court shall cause the probationer to be brought before it within a reasonable time and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction. If the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) If the court does not hold a hearing or does not take action on the violation within the twenty-one-day period, the offender shall be released from detention and shall return to probation status. The court may subsequently hold a hearing and may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(d) For an offender charged with a technical violation who has not been detained awaiting the revocation hearing, the court may hold a hearing within a reasonable time. The court may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for one or more technical violations the court shall impose

a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(6) If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Upon the revocation of probation or suspension of sentence of any offender, such offender shall be placed in the legal custody of the State Department of Corrections and shall be subject to the requirements thereof.

(7) Any probationer who removes himself from the State of Mississippi without permission of the court placing him on probation, or the court to which jurisdiction has been transferred, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that one is on probation shall be considered as any part of the time that he shall be sentenced to serve.

(8) The arresting officer, except when a probation and parole officer, shall be allowed the same fees as now provided by law for arrest on warrant, and such fees shall be taxed against the probationer and paid as now provided by law.

(9) The arrest, revocation and recommitment procedures of this section also apply to persons who are serving a period of post-release supervision imposed by the court.

(10) Unless good cause for the delay is established in the record of the proceeding, the probation revocation charge shall be dismissed if the revocation hearing is not held within thirty (30) days of the warrant being issued.

(11) The Department of Corrections shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of probation or post-release supervision, the average time between detention on a warrant and preliminary hearing, the average time between detention on a

warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the court, the number of one-hundred-twenty-day sentences in a technical violation center issued by the court, the number of one-hundred-eighty-day sentences issued by the court, and the number and average length of the suspended sentences imposed by the court in response to a violation.

**HISTORY: Codes, 1942, § 4004-25; Laws, 1956, ch. 262, § 12; Laws, 1962, ch. 331; brought forward, Laws, 1981, ch. 465, § 108; reenacted, Laws, 1984, ch. 471, § 118; reenacted, Laws, 1986, ch. 413, § 118; Laws, 1990, ch. 331, § 1; Laws, 1992, ch. 395, § 1; Laws, 1995, ch. 596, § 11; Laws, 2006, ch. 566, § 6; Laws, 2014, ch. 457, § 58, eff from and after July 1, 2014; Laws, 2018, ch. 416, § 11, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment, in (5), substituted "one or more technical violations" for "a technical violation" in the fourth sentence of (a), second sentence of (b), third sentence of (c) and third sentence of (d), substituted "revocation" for "technical violation" everywhere it appears in (a) through (c) and in the third, fourth and fifth sentences of (d), and made a minor stylistic change in (c).

## JUDICIAL DECISIONS

### ANALYSIS

3. Jurisdiction.
4. Proceedings; right to counsel.
6. Propriety of particular sentences.
7. Miscellaneous.

**3. Jurisdiction.**

Appellant's claim for excessive detention while awaiting a revocation hearing was procedurally barred because appellant should have either filed a habeas petition or a motion for relief pursuant to subsection (3), and his failure to do so resulted in the issue never being presented to the circuit court and, therefore, it was procedurally barred on appeal. Edmonson v. State, 238 So. 3d 1218, 2018 Miss. App. LEXIS 101 (Miss. Ct. App. 2018).

**4. Proceedings; right to counsel.**

Appellant's motion for post-conviction relief was properly denied because the trial court was not requested to appoint counsel during the revocation hearing; the revocation hearing was straightforward, and the trial court instructed appellant that he could cross-examine witnesses, testify on his own behalf, and call any witnesses that he wanted. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

**6. Propriety of particular sentences.**

Circuit court did not err in summarily dismissing appellant's post-conviction-relief motion because its decision to impose a period of imprisonment greater than ninety days was not clearly erroneous since appellant committed at least three technical violations of his post-release supervision. Edmonson v. State, 238 So. 3d 1218, 2018 Miss. App. LEXIS 101 (Miss. Ct. App. 2018).

**7. Miscellaneous.**

Appellant's claim for excessive detention while awaiting a revocation hearing lacked support because the record on appeal was sparse on the details of appellant's arrest and subsequent pre-hearing detention; the record also was void of any transcript from appellant's revocation hearing. Edmonson v. State, 238 So. 3d 1218, 2018 Miss. App. LEXIS 101 (Miss. Ct. App. 2018)

Because appellant violated three other conditions of his post-release supervision in addition to the condition requiring that he not commit any state or federal offense, appellant committed three "technical violations," and thus, the circuit court was within its authority to impose the remainder of the suspended portion of his sentence. Claverie v. State, 261 So. 3d 1120,

2018 Miss. App. LEXIS 122 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 36 (Miss. 2019).

Appellant was afforded a neutral and detached probation revocation hearing because the circuit court judge did not prosecute for the State when he recited the allegations, asked appellant if he disputed or admitted them, and asked the probation officer if he had anything to add. Walker v. State, 230 So. 3d 709, 2016 Miss. App. LEXIS 666 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 230 So. 3d 703, 2017 Miss. LEXIS 387 (Miss. 2017).

Revocation of appellant's probation was proper because appellant did not report to his probation officer and did not pay the requisite fees and restitution; by appellant's own admission, he did, in fact, violate the conditions of his probation. Walker v. State, 230 So. 3d 709, 2016 Miss. App. LEXIS 666 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 230 So. 3d 703, 2017 Miss. LEXIS 387 (Miss. 2017).

## § 47-7-37.1. Revocation of probation or post-release supervision.

### JUDICIAL DECISIONS

**1. Imposition of remainder of sentence.**

There was sufficient record evidence to support the circuit court's determination that appellant more likely than not violated the condition of his post-release supervision order that required that he not commit any state or federal offense; accordingly, the circuit court was authorized to impose the remaining portion of appellant's suspended sentence. Claverie v. State, 261 So. 3d 1120, 2018 Miss. App. LEXIS 122 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 36 (Miss. 2019).

## § 47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.

(1) The commissioner shall establish rules and regulations for implementing the earned-discharge program that allows offenders on probation and parole to reduce the period of supervision for complying with conditions of probation. The department shall have the authority to award earned-discharge credits to all offenders placed on probation, parole, or post-release supervision who are in compliance with the terms and conditions of supervision. An offender serving a Mississippi sentence for an eligible offense in any jurisdiction under the Interstate Compact for Adult Offender Supervision shall be eligible for earned-discharge credits under this section. Offenders shall not be denied earned-discharge credits solely based on nonpayment of fees or fines if a hardship waiver has been granted as provided in Section 47-7-49.

(2) For each full calendar month of compliance with the conditions of supervision, earned-discharge credits equal to the number of days in that month shall be deducted from the offender's sentence discharge date. Credits begin to accrue for eligible offenders after the first full calendar month of compliance supervision conditions. For the purposes of this section, an offender is deemed to be in compliance with the conditions of supervision if there was no violation of the conditions of supervision.

(3) No earned-discharge credits may accrue for a calendar month in which

a violation report has been submitted, the offender has absconded from supervision, the offender is serving a term of imprisonment in a technical violation center, or for the months between the submission of the violation report and the final action on the violation report by the court or the board.

(4) Earned-discharge credits shall be applied to the sentence within thirty (30) days of the end of the month in which the credits were earned. At least every six (6) months, an offender who is serving a sentence eligible for earned-discharge credits shall be notified of the current sentence discharge date.

(5) Once the combination of time served on probation, parole or post-release supervision, and earned-discharge credits satisfy the term of probation, parole, or post-release supervision, the board or sentencing court shall order final discharge of the offender. No less than sixty (60) days prior to the date of final discharge, the department shall notify the sentencing court and the board of the impending discharge.

(6) The department shall provide semiannually to the Oversight Task Force the number and percentage of offenders who qualify for earned discharge in one or more months of the year and the average amount of credits earned within the year.

**HISTORY: Laws, 2014, ch. 457, § 55, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 36, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Criminal Justice Reform Act."

**Amendment Notes —** The 2019 amendment added the last sentence of (1).